

89-667

Supreme Court, U.S.

FILED

OCT 23 1989

JOSEPH F. SPANIOL, JR.  
CLERK

No.

**In the Supreme Court**  
OF THE  
**United States**

OCTOBER TERM, 1989

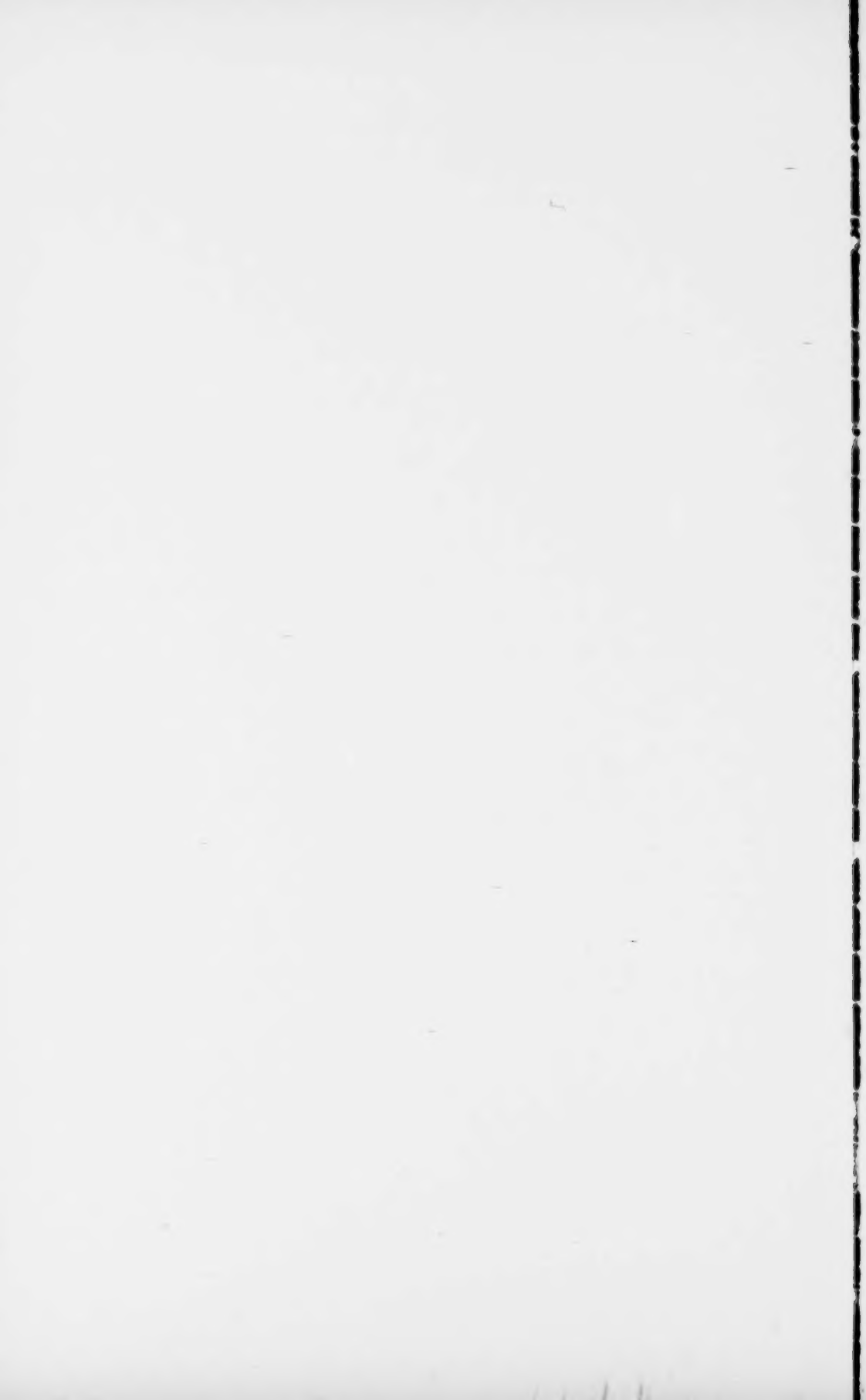
SHIRLEY LOFTIS,  
*Petitioner,*

VS.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,  
*Respondents.*

**PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

PARKER AND COVERT  
SPENCER E. COVERT  
1901 East Fourth Street  
Suite 312  
Santa Ana, California 92705  
*Attorney for Petitioner*  
*Shirley Loftis*



## **LIST OF PARTIES TO THE PROCEEDING**

Petitioner is Shirley Loftis, who was the Plaintiff in the District Court proceeding.

Respondents are the Los Angeles Unified School District and seven individuals, Harry Handler, John J. Lingel, Ira Gilbert, Clayton Lilley, Milton Neuschwander, Sidney C. Hoskins and Kirk Van Sooy, who were defendants in the District Court proceeding.

## QUESTIONS PRESENTED

1. Where the Appellate Court affirmed that the Plaintiff established a prima facie case of race and sex discrimination through disparate impact analysis, and where the Appellate Court further determined that there had been no rebuttal using established precedents of this Court, may the Appellate Court nevertheless deny the Plaintiff a ruling in her favor by engaging in factfinding and speculating what facts the District court might have found if the District Court had used the proper legal standards?

2. Having established a prima facie case of race and sex discrimination by disparate impact and treatment, may the employer justify its decision not to promote the plaintiff based upon a comparison between the Plaintiff and a hypothetical perfect or ideal candidate?

3. Having established a prima facie case of race and sex discrimination by disparate impact and treatment, may the employer justify its decision not to promote the Plaintiff based upon subjective evidence that arose after Plaintiff's denial of a promotion?

4. Did the District establish legitimate employer goals to justify only considering references/recommendations obtained within the last 10 years, thus disregarding Plaintiff's employment record of over 30 years in the District?

5. Does Title IX of the Education Amendments of 1972 also prohibit employment discrimination?

6. Are the individual defendants liable for their intentional discrimination against Plaintiff and did Defendant Handler's failure to act against the conspiracy deprive Plaintiff of her civil rights?

7. Was it erroneous for the District Court to require Plaintiff to prove physical or monetary harm in order to claim damages for violation of her civil rights?



## TABLE OF CONTENTS

	<u>Page</u>
LIST OF PARTIES TO THE PROCEEDING .....	i
QUESTIONS PRESENTED .....	ii
OPINIONS BELOW .....	1
JURISDICTION .....	1
PERTINENT STATUTES .....	2
STATEMENT OF THE CASE .....	3
A. Nature of the Case .....	3
B. Material Facts .....	3
REASONS FOR GRANTING THE PETITION .....	14

### I.

THE NINTH CIRCUIT COURT OF APPEALS' VIEW THAT A DE NOVO STANDARD MAY BE APPLIED IN REVIEWING FINDINGS OF FACT GOVERNING THE REBUTTAL OF A PRIMA FACIE CASE OF DISPARATE IMPACT IS IN DIRECT CONFLICT WITH THE REPORTED DECISIONS OF THE SUPREME COURT INCLUDING <i>WARDS COVE PACKING CO., INC. V. ATONIO</i> , 490 U.S. —, 109 S.CT. 2115 (1989) ....	15
A. The Appellate Court cannot engage in factfinding to overcome the District's failure to rebut the prima facie case .....	15
B. Having established a prima facie case against a multiple-component system, the Court of Appeals cannot engage in factfinding to rebut the legal deficiencies in the multiple-component promotion system .....	18

## TABLE OF CONTENTS

Page

## II.

AFTER-THE-FACT RATIONALE MUST NOT BE UTILIZED BY THE EMPLOYER TO DE- FEAT A PRIMA FACIE CASE OF INTEN- TIONAL DISCRIMINATION .....	20
---	----

## III.

REGENCY OF EXPERIENCE CANNOT BE APPLIED AFTER-THE-FACT TO DISQUAL- IFY AN OTHERWISE QUALIFIED CANDI- DATE FOR A SCHOOL ADMINISTRATIVE POSITION .....	22
--	----

## IV.

THE DISTRICT ALSO VIOLATED TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (20 U.S.C. 1681) .....	24
--	----

## V.

ALL OF THE INDIVIDUAL DEFENDANTS HAD RECOMMENDATION, ASSIGNMENT AND OTHER AUTHORITY OVER THE PRO- MOTION PROCESS. THEY WERE DELIB- ERATELY INDIFFERENT IN THEIR ACTS OR OMISSIONS AND THEY LACK QUALI- FIED IMMUNITY .....	24
--	----

## VI.

DAMAGES FOR HUMILIATION, MENTAL ANGUISH AND EMBARRASSMENT ARE RECOVERABLE IN A CLAIM FOR INTEN- TIONAL DISCRIMINATION .....	26
CONCLUSION .....	27

## Index to Appendices

	<u>Page</u>
Memorandum of Opinion; Findings of Fact and Conclusions of Law, United States District Court, Central District of California. ....	A-1-33
Judgment, United States District Court, Central District of California .....	B-1
Memorandum, United States Court of Appeals for the Ninth Circuit .....	C-1-10
Order Denying Petition for Rehearing, United States Court of Appeals for the Ninth Circuit	D-1
Pertinent Text of Constitutional Provisions, Statutes and Regulations Involved .....	E-1-16
Excerpt of Exhibits .....	F-1-37
Exhibit 1 — 1981 Lingel Reference .....	F-1-2
Exhibit 2 — 1979 Lingel Reference .....	F-3-4
Exhibit 24 — Promotional Announcement, Approved, Harry Handler ...	F-5-6
Exhibit 36 — 1979 Hoskins Reference .....	F-7-15
Exhibit 42 — 1981 Hoskins Reference .....	F-16-25
Exhibit 50 — “Spotlight,” Los Angeles Uni- fied School District, March 19, 1984 .....	F-26-29
Exhibit 432 — “Report of a Study of Certifi- cated Promotional Policies and Procedures,” Los Ange- les Unified School District, March, 1984 .....	F-30-37

## TABLE OF AUTHORITIES CITED

## Cases

	<u>Page</u>
<i>Brown v. Board of Education</i> , 347 U.S. 483, 74 S.Ct. 686 (1954) .....	4
<i>Cary v. Piphus</i> , 435 U.S. 247, 98 S.Ct. 1042 (1978) .....	27
<i>Connecticut v. Teal</i> , 457 U.S. 441, 102 S.Ct. 2525 (1982) .....	18
<i>Cuddy v. Carmen</i> , 762 F.2d 119 (D.C. CA 1985) ...	23
<i>Geller v. Markham</i> , 635 F.2d 1027 (CA2 1980) .....	22
<i>Griffin v. Carlin</i> , 755 F.2d 1516 (CA11 1985) .....	19
<i>Griggs v. Duke Power Co.</i> , 40 U.S. 924, 91 S.Ct. 849 (1971) .....	19, 22
<i>Icicle Seafoods, Inc. v. Worthington</i> , 475 U.S. 709, 106 S.Ct. 1527 (1986) .....	15
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792, 93 S.Ct. 1817 (1973) .....	23
<i>North Haven Board of Education v. Bell</i> , 456 U.S. 509, 102 S.Ct. 1912 (1982) .....	24
<i>Price Waterhouse v. Hopkins</i> , 490 U.S. —, 109 S.Ct. 1775 (1989) .....	20, 23
<i>Procunier v. Navarette</i> , 434 U.S. 555, 98 S.Ct. 855 (1978) .....	26
<i>Smith v. Wade</i> , 461 U.S. 30, 103 S.Ct. 1625 (1983) ..	25
<i>Stallworth v. Shuler</i> , 777 F.2d 1431 (CA11 1985) ...	21
<i>Texas Department of Com. Affairs v. Burdine</i> , 450 U.S. 248, 101 S.Ct. 1089 .....	20, 23
<i>Wards Cove Packing Co., Inc. v. Atonio</i> , 490 U.S. —, 109 S.Ct. 2115 (1989) .....	15, 18
<i>Watson v. Forth Worth Bank and Trust</i> , 487 U.S. , 108 S.Ct. 2777 (1988) .....	18
<i>Wygant v. Jackson Board of Education</i> , 476 U.S. 265, 106 S.Ct. 1842 (1986) .....	4

## TABLE OF AUTHORITIES CITED

Page**Constitution**

United States Constitution, Fourteenth Amendment	2, 14
--	-------

**Rules**

Rules of the Supreme Court of the United States, Rule 21.1 .....	3
---	---

**Statutes****California Government Code**

Sec. 12900 .....	3, 26
Sec. 12940 .....	3, 26
Sec. 12941 .....	3
Sec. 12943 .....	26

Civil Rights Act of 1866, 42 U.S.C. 1981 .....	2
--	---

Civil Rights Act of 1871, 42 U.S.C. 1983, 42 U.S.C. 1985, 42 U.S.C. 1986 .....	2, 13
---	-------

Title VII of the Civil Rights Act of 1964 .....	2, 3, 4, 13, 14, 17, 18, 24
---	-----------------------------

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 <i>et seq.</i> .....	2, 24
--	-------

**United States Code, Title 28**

Sec. 1254(l) .....	2
Sec. 1331 .....	1
Sec. 2101(c) .....	2

**The Age Discrimination in Employment Act, Title 29**

Sec. 623 .....	2
Sec. 623(a) .....	22
Sec. 631 .....	2
Sec. 631(a) .....	22

**United States Code, Title 42**

Sec. 1981 .....	2, 13, 24, 26
-----------------	---------------

## TABLE OF AUTHORITIES CITED

## STATUTES

	<u>Page</u>
Sec. 1983 .....	13, 24, 25, 26
Sec. 1985 .....	13
Sec. 1986 .....	13
Sec. 2000e-2(a) .....	2, 26
Sec. 2000e-3(a) .....	2, 26

## Regulations

## Code of Federal Regulations, Title 29

Sec. 1607.5(F) .....	22
Sec. 1607.5(H) .....	22
Sec 1607.11 .....	22

No.

**In the Supreme Court**  
**OF THE**  
**United States**

---

OCTOBER TERM, 1989

---

SHIRLEY LOFTIS,  
*Petitioner,*

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,  
*Respondents.*

---

**Petition for Writ of Certiorari to  
the United States Court of Appeals  
for the Ninth Circuit**

---

**OPINIONS BELOW**

On September 19, 1986, the United States District Court for the Central District of California (Magistrate Kronenberg) filed its Memorandum of Opinion; Findings of Fact and Conclusions of Law following a non-jury trial. Appendix A. On September 23, 1986, judgment was entered in favor of all defendants. App. B. On June 20, 1989, the Court of Appeals filed its opinion affirming the judgment. App. C. On July 28, 1989, the Court of Appeals filed its order denying the Petition for Rehearing. App. D.

**JURISDICTION**

Federal jurisdiction in the trial court was evoked under 28 U.S.C. 1331 and the doctrine of pendent jurisdiction. The

decision of the Court of Appeals sought to be reviewed was entered on June 20, 1989. App. C.

A timely Petition for Rehearing was filed on July 5, 1989, and the Petition was denied on July 28, 1989. App. D. Jurisdiction in this Court is evoked under 28 U.S.C. 1254(1). This Petition is timely under 28 U.S.C. 2101(c).

### PERTINENT STATUTES

Petitioner's claims arise under Title VII of the Civil Rights Act of 1964, as amended, as well as other statutes guaranteeing civil rights in the context of public employment.

42 U.S.C. 2000e-2(a) provides:

"It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

In addition, Plaintiff's claims arise under Title VII, section 2000e-3(a), the Fourteenth Amendment of the United States Constitution; the Civil Rights Act of 1866, 42 U.S.C. 1981; the Civil Rights Act of 1871, 42 U.S.C. 1983, 42 U.S.C. 1985, 42 U.S.C. 1986; the Age Discrimination in Employment Act, 29 U.S.C. 623, 631; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681; and California law prohibiting discrimination, California Government Code



sections 12900, 12940 and 12941. Pursuant to Rule 21.1(f) of the Supreme Court of the United States, the pertinent text of these laws and regulations is set forth in Appendix E.

## **STATEMENT OF THE CASE**

### **A. Nature of the Case.**

Shirley Loftis, a white female born in 1928 and employed by the Los Angeles Unified School District ("District") since 1958, falls into that tragic category of white females employed by the District who both before and after Title VII have been discriminated against with respect to their employment opportunities to become school administrators. Loftis brought this action against the District and various administrators charging employment discrimination on the basis of race, sex and age.

Following a 21-day bifurcated non-jury trial taken under submission on November 20, 1984, Magistrate Kronenberg, on September 19, 1986, ruled in favor of all defendants after having also ruled that Loftis established a prima facie case of both disparate impact and disparate treatment. The Ninth Circuit affirmed, despite concluding that the trial court "used an incorrect legal standard in reaching its result" and that "existing social factors" do not provide a basis for overcoming a prima facie case. (App. C-8)

### **B. Material Facts.**

The District is the nation's second largest school district. The District exclusively promotes its administrators from its teaching staff. (App. A-5) It has always used a subjective promotion system that is unsystematic, without any written standards for any of its five pass/fail barriers, and employs two different promotion routes to administrative positions (approximately 25 percent are promoted by "direct appointment" without even the necessity of an application, and the

remainder are promoted through the subjective "promotion cycle" route.) Prior to 1972, before Title VII of the Civil Rights Act of 1964, as amended, became applicable to the District, its administrative corps was primarily composed of white males. In 1972, white males held 53 percent of the administrative positions, but provided only 25 percent of the teachers. A white male was 4.5 times as likely as a white female to be an administrator.

By 1980, the District had reversed its employment practices and was primarily promoting minorities to administrative positions. This is pursuant to an informal, loosely-tailored affirmative action program that discriminates against white females. White females have been and continue to be left out of the process, both before and after Title VII, despite the fact that white females provide 52.3 percent of the elementary teachers. The District's recent practice of promoting minorities is also based upon the discriminatory and unlawful premise that the District's administrative work force should mirror its student population in violation of *Wygant v. Jackson Board of Education*, 476 U.S. 265, 276, 106 S.Ct. 1842, 1848 (1986) and ultimately *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954).

Statistical evidence demonstrated how the District's (elementary and secondary schools) promotions to the administrator corps are related to the increase in the percentage of minority students. Non-white student composition has increased from 43.4 percent in 1966 to 53.6 percent in 1972, and to 76.2 percent in 1980. Non-white certificated (teachers/administrators) composition has changed from 19.4 percent in 1966 to 23.5 percent in 1972, 34.8 percent in 1980, and to 37.7 percent in 1983. As white male administrators retired, they were replaced by non-white candidates even though the white female candidates as a group had greater tenure. In 1972, non-white males were 4.9 times more likely to serve as an administrator than a white female. The ratio

was 4.1 in 1980, and 4.0 in 1983. The ratio for black females compared to white females was 1.4 in 1972, 2.2 in 1980, and 1.9 in 1983.

In 1980, at the elementary level the composition statistics show that black males were 10.6 times as likely to be assistant principals as white females. Likewise, white males were 5.7 times as likely, "male others" (Hispanic, Asian) were 10.1 times as likely, black females were 2.5 times as likely, and "females other" were 1.7 times as likely as white females to be assistant principals. In 1980, none of the eight region superintendents of the District was a white female despite the fact that they provided 52.3 percent of the elementary teachers. Only one of the 16 deputy region superintendents was a white female.

The subjective recruitment-training barrier, the *first step* in the promotion process for either route, caused disparate impact against white females and females during the period of 1972-1979. For example, in the 1972 promotion cycle to assistant principal, elementary, only one out of every 274 white female teachers applied for promotion while one out of every eight black males applied and one out of every 18 white males applied. In the 1974 promotion cycle, the ratios were 182, 5 and 18. In the 1976 promotion cycle, the ratios were 102, 4 and 14. In the 1977 promotion cycle, the ratios were 70, 5 and 14. In the 1979 promotion cycle, one out of every 51 white female teachers applied, one out of every seven black male teachers applied and one out of every 20 white male teachers applied.

In the "recruitment-training component", teachers acquire promotional experience which allows them to progress in the selection process. What constitutes "promotional experience" is undefined, unidentified, unweighted and subjective. The District Court found that there are no objective criteria or written standards. (App. A-7) The promotion announcements and application for Assistant Principal, El-

ementary, do not identify or require any mandatory specific promotional experience.

The District Court also found that a school principal, or some other administrator such as a region superintendent, has "sole discretion" to select a teacher with or without an administrative credential or academic qualifications and provide or withhold "promotional experience" in the "recruitment-training component." (App. A-6)

There is also no systematic procedure or requirement for giving notice of promotional experience openings. Teachers who pass the "recruitment-training component," pass-fail barrier proceed in either the "promotion cycle route" or the "direct appointment route." Candidates that proceed through the "promotion cycle route" must pass four subjective barriers: recruitment-training, Training and Experience ("T & E") Committee, personal interview committee and rule-of-five.

There are no written standards or guidelines used by the T & E Committee to evaluate the applicants. The T & E Committee is orally instructed to consider the recency of promotional experience of the applicant, giving greater weight to recent promotional experience, and also to apply a ten-year limitation or cut-off. The District Court found that the ten-year rule:

"has the result of making less valuable the experience of older persons acquired early in their careers. The dating of experience is also an indication of the probable age of the applicant." (App. A-7)

The District Court found that sex, race and age of an applicant can be determined by the T & E Committee members from the application and references. (App. A-7)

The District Court also found that:

"the rating system had many weaknesses growing out of vague standards and words whose subjective mean-

ings may differ between raters. It was largely implemented and controlled by one individual whose qualifications are ambiguous at best. It was subjective and lacked sufficient controls or norms. Although no rating system may be completely objective, some are more so than others." (App. A-25)

The subjective "direct appointment" barrier caused disparate impact against white females and females for promotion to assistant principal, elementary, during the period 1972-1980. For example, in 1975-76, black male elementary teachers were selected at a rate that was 43.8 times that for white female elementary teachers, and black female teachers were selected at a rate that was 3.2 times that for white females. The 1978-79 time period showed similar results. During the period 1972-1980, males received 61 percent of the "direct appointments" to principal, elementary, and 44 percent of the "direct appointments" to assistant principal, elementary, when males provided approximately 14 percent of the labor pool.

Loftis is a highly-qualified individual who but for the discriminatory practices of the District should have been promoted to assistant principal in 1964, but who has never been promoted because of the District's discriminatory practices.

Loftis earned her B.A. Degree in 1949 from the University of Hawaii. She served as an administrator with the State Department in Tokyo, Japan, from 1949-1953. Loftis embarked on her teaching career in 1956. From 1956-1958, she was a fourth grade teacher at the Cape Canaveral, Florida, Federal elementary school. In 1958, Loftis commenced her employment with the District.

In 1961, she earned her M.S. Degree from the University of Southern California with a straight "A" average, plus awards, and membership in the national honorary fraternity, Pi Lambda Theta. She was awarded her administrative



credential (kindergarten - 14th grade) qualifying her to hold all District administrative positions, including superintendent, and completed a total of 79 graduate semester units in school administration.

Loftis received exclusively "outstanding" performance evaluations (20 written evaluations during the period 1958-1984) from a wide variety of administrators. In 1962, Loftis was assigned to a training and demonstration school that provided training for college seniors entering education. The training and demonstration school was located in San Pedro, California, a 25-mile drive (one way) from her South Gate, California, school and from her Huntington Park home. Loftis' South Gate school was located only two miles from the Watts Towers, Watts, an inner-most city area, but the District did not deem a Watts transfer a promotional opportunity assignment.

In 1964, and after eight consecutive years of teaching, Loftis advised the training and demonstration school principal, Mr. Miller, that she wanted to apply for the 1964 promotion cycle to assistant principal, elementary. Mr. Miller informed Loftis for the first time that he believed "women should be older than men" before they became administrators and that he would not provide her with the necessary recommendation.

In 1966, Loftis applied for promotion to assistant principal. Mr. Miller's recommendation stated:

"Mrs. Loftis has the highest potential to become a successful administrator of any person I have had contact with within the last five years. . . . I would have no reservation in placing Mrs. Loftis in a Vice-Principal position without an examination!"

Loftis successfully passed the 1966 promotion cycle requirements, but she was not offered an assistant principalship. Uncontradicted evidence was introduced at trial that predominantly black candidates attended the 1966 meeting

of selected candidates. At that time, blacks comprised 13.3 percent of the elementary teachers and whites 80.6 percent.

In 1966, Loftis and the principal at 118th Street School, an inner-city school in Watts, requested that the District transfer Loftis as a teacher to a vacancy at the 118th Street School. The deputy region superintendent, Mr. Ira Gilbert, using his unlimited discretion, refused their requests. Gilbert served in the same capacity over Loftis during 1965-84. In 1966, Loftis entered the newly-established administrator development program and successfully completed it in 1968. Gilbert's recommendation in 1966, which was a prerequisite to her participation in the program, stated:

"Mrs. Loftis is an outstanding teacher. She has served in two schools as a training teacher and is recognized as a leader in both. She is an intelligent, warm person and has much to offer in this position. Mrs. Loftis would be an excellent vice-principal."

Loftis served as a traveling teacher from 1969-1970, in inner-city schools, spending one or two days a week in the classrooms at different schools advising and guiding inexperienced teachers and classroom teachers with gifted students.

In 1974 and 1976, Loftis submitted timely, formal, written requests for promotional assignments. Deputy region superintendent, Gilbert, disregarded her 1974 request and in 1976, assigned Loftis to Dominguez Elementary School as a teacher.

In seeking promotions, Loftis taught in 17 different District schools located in seven cities/areas (South Gate, San Pedro, Los Angeles, Watts, Gardena, Harbor City, and Carson). During this time she applied for ten administrative positions.

After Loftis filed her EEOC complaint in January, 1980, she became the sole intervenor in a class action suit for sex

discrimination in promotions against the District (CV80-3348, *Szewiola v. LAUSD*), *opted out of the settlement in April, 1981, along with other females, and filed this action in September, 1981.*

The issue of Loftis' subjective qualifications issue did not arise until 1981, after Loftis had filed her EEOC complaint a year earlier, and while she was serving as the sole intervenor in the class action suit. The subjective qualification issue was initiated by Defendant and Region Superintendent Lingel. A new principal, Mrs. Zikas, who, in November, 1980, was suddenly transferred in over Loftis at Dominguez School from a different region. Loftis had no previous contact with Zikas, but Zikas was promoted by Lingel and recruited to the new region by Lingel.

In 1981, Lingel for the first time sought the opinion of another teacher, Mr. Selznick, about Loftis' administrative potential. Selznick, a third grade teacher at Dominguez School, was one of the two teachers' union representatives for the school. Loftis was not a union member. Selznick testified, in responding to Lingel's request:

"...in my opinion I didn't feel she (Loftis) was *best* qualified. She (Loftis) might be an *outstanding* teacher but that doesn't make her an *outstanding* administrator." "... (that Loftis was) *extremely polite*." "... (that he) did not want to see Mrs. Carlock (the other union representative for the school) *demoted* (from the position as substitute principal), (for Selznick thought it would be) *unfair*." (Emp. added.)

Loftis successfully served as the Dominguez School testing coordinator for three and one-half years during 1980-1983, and as the school's substitute principal for eighteen months from January, 1981 to June, 1982. Loftis was nominated and seconded for the faculty ombudsmen position of faculty representative in September, 1984, but she declined



the position since she knew that an October, 1984, trial was forthcoming.

Lingel, in both his 1979 and December, 1981, written promotion reference recommendations rated Loftis in the top possible overall bracket for prediction of her success as an assistant principal, and made no negative comments regarding her abilities or qualifications. (App. F-1-4, Ex. 1, 2)

The new principal, Mrs. Zikas, also rated Loftis qualified and satisfactory without any negative comments in her 1981 and 1983 written evaluations. The only other evaluations that Loftis received for her assignment at Dominguez School were the 1979 and 1981 written promotion recommendations from Mr. Sidney Hoskins, the Dominguez School principal over Loftis from October, 1976 to February, 1979. (App. F-7-25, Ex. 36, 42) Both of these references for promotion to assistant principal were in the top bracket with the highest possible rating for prediction of success, and contained only complimentary comments.

Loftis also established a prima facie case of disparate treatment with respect to her applications for 10 different administrative positions between 1964-80. None of the District's witnesses at the trial had any personal knowledge as to the actual reasons why Loftis was rejected for the 10 positions. None of the testimony pertained to the 576 teachers that were promoted from 1972-80 to entry-level administrators (elementary) being better qualified than Loftis at the time of selection and promotion. Their testimony was based upon a *comparison between Loftis and the "perfect" or "ideal" administrative applicant, not any actual applicant who was, in point of fact, selected.* In other words, Loftis was always compared at trial against "a perfect 10" when, in point of fact, no such person was ever produced at trial. It would be impossible for over 576 new administrators to all be "perfect 10's."

The District Court also found that promotional experience is totally controlled by the subjective decisions of other administrators. (App. A-6) The District Court found that a *prima facie* case of intentional discrimination had been established against Defendants Lingel and the District. (App. A-30) One error in the District Court's decision was its conclusion that Loftis had failed to prove by "direct factual evidence" Lingel's "intentional discrimination *alone* and that without it, she would have been advanced." (App. A-21, 31; Emp. added.)

One example of Lingel's intentional acts was his submission of a harmful reference regarding Loftis on December 2, 1981. The reference was substantially lower than Lingel's 1979 reference. The 1981 reference was submitted shortly after Lingel had been served as a defendant in September, 1981. This adverse reference is only adverse to the extent that not in every category did Loftis receive the highest rating of "Endorsed with Enthusiasm." In three of seven categories Loftis received the second highest rating, "Endorsed with Confidence." Finally, the overall rating entitled "OVERALL PREDICTION FOR SUCCESS" was again the highest possible rating, "Endorsed with Enthusiasm." (App. F-1-2, Ex. 1)

All of the other Defendant administrators had a direct part in the "recruitment-training component" and in the "promotion cycle route." The District Court found that former Principal Neuschwander wrote on an evaluation reference:

"that he had not had the opportunity to observe [certain of Loftis' qualifications]." (App. A-12)

The District Court found that Neuschwander refused to change his remarks despite Loftis' request that he do so, and the District court found that:

"This would have an adverse affect (sic) on plaintiff's chances for promotion." (App. A-12)

The District Court found similar intentional behavior on the part of former Principals Hoskins and Van Sooy, but again excused their conduct on the mistaken belief that this *alone* did not keep Plaintiff from advancing. The District Court dismissed Defendant Handler on the basis that:

"He [Handler] was not directly involved in the promotional process at the time." (App. A-10)

However, Handler was directly involved. (App. F-5-6, Ex. 24) When Loftis went to Handler seeking assistance regarding her failure to obtain a promotion, the District Court found that Handler indicated:

"Considering her training and experience, he could not understand why she had not gotten ahead." (App. A-10)

He suggested that:

"If she were interested in promotion perhaps she should consider leaving the district." (App. A-10)

Not only does Handler's opinion confirm that Loftis qualified based upon her training and experience, but it also shows Handler's deliberate indifference to the discriminatory treatment suffered by Loftis. Clearly, Handler knew what was going on. Instead of solving the problem, he contributed to it by suggesting that she leave the District. The conduct of Handler, as well as the conduct of the lower ranking District administrators, and the blatant statistical imbalance against white females, demonstrate that it was the District's standard operating procedure, its custom and policy, to discriminate against white females in violation of Title VII of the 1964 Civil Rights Act, as amended, and 42 U.S.C. 1981, 1983, 1985 and 1986.

## REASONS FOR GRANTING THE PETITION

This case raises fundamental questions as to how a public employer, the nation's second largest school district, can

circumvent this Court's holdings under Title VII of the Civil Rights Act of 1964, as amended, and the Fourteenth Amendment of the United States Constitution through the District's implementation of informal affirmative action programs. Statistical evidence establishes that the Los Angeles Unified School District grants a preference to non-white candidates for promotion to administrative positions. The effect of this informal affirmative action program is to promote unlawfully black males at a rate that ranged from 7 to 43 times the rate for white females.

In a subjective promotion system can the employer justify its decision based upon qualifications that were not required of all successful applicants? To allow an employer to do this after-the-fact permits the employer to selectively pick and chose which qualifications count and which qualifications do not count. In effect, the employer is permitted to manufacture a artificial rationale for not having promoted Loftis. If *post hoc* rationalization is permitted then the employer is immunized from liability.

This case raises fundamental questions as to whether the Court of Appeals may retry a civil rights employment case after the plaintiff has established a case of both disparate impact and disparate treatment. The Court of Appeals erred when it permitted the employer to compare the plaintiff to a hypothetical perfect or ideal candidate. An employer will always be able to rebut a *prima facie* case if it is allowed to compare the 'plaintiff to a hypothetical candidate. Rather, the employer must be required to produce evidence regarding the actual candidates who were promoted, not some hypothetical candidate. This is especially true when the employer's ratings of the plaintiff found her to be in the highest ranking with respect to overall prediction of success.

The District also violated Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act with its 10-year limitation on promotional

experience and the placing of new but not justified promotional requirements on long-time candidates.

This Petition should also be granted because those school administrators who directly participated in the employment decisions not to promote the plaintiff have escaped from liability based upon the mistaken notion that their actions *alone* must have prevented the plaintiff from being promoted. Individual Defendants must also be liable when they intentionally withheld promotional opportunities and when they have unlimited discretion in how much weight is given experience.

## I.

**THE NINTH CIRCUIT COURT OF APPEALS' VIEW THAT A DE NOVO STANDARD MAY BE APPLIED IN REVIEWING FINDINGS OF FACT GOVERNING THE REBUTTAL OF A PRIMA FACIE CASE OF DISPARATE IMPACT IS IN DIRECT CONFLICT WITH THE REPORTED DECISIONS OF THE SUPREME COURT INCLUDING *WARDS COVE PACKING CO., INC. V. ATONIO*, 490 U.S. —, 109 S.CT. 2115 (1989)**

- A. The Appellate Court cannot engage in factfinding to overcome the District's failure to rebut the prima facie case.

In *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 106 S.Ct. 1527 (1986), the Ninth Circuit had engaged in factfinding, notwithstanding the fact that the District Court had not found the necessary facts regarding whether or not "maritime work" was "incidental and occasional, taking but a small portion of the work time." Then Justice Rehnquist delivered the opinion of the Court and concluded as follows:

"If the Court of Appeals believed that the District Court had failed to make findings of fact essential to a proper resolution of the legal question, it should have remanded to the District Court to make those findings.

If it was of the view that the findings of the District Court were 'clearly erroneous' within the meaning of Rule 52(a), it could have set them aside on that basis. If it believed that the District Court's factual findings were unassailable, but that the proper rule of law was misapplied to those findings, it could have reversed the District Court's judgment. But it should not simply have made factual findings on its own." (*Id.* at 714; 106 S.Ct. at 1530.)

When the Court of Appeals in *Loftis* found that the proper rule of law was misapplied by the District Court to the findings, its obligation was to reverse the District Court's judgment. It should not simply have made factual findings on its own, where it engaged in speculating what the District Court might have done if the District Court had followed the proper legal standards. (App. C-5-9, Part III C.)

The Court of Appeals found that the District Court had held that *prima facie* cases of disparate impact in promotions had been established against two groups, the District's *females* (App. C-5) and *white females* (App. C-7) The Court of Appeals also correctly found that in order to rebut the *prima facie* cases, the District must show statistically that no disparate impact upon the two groups existed, or alternatively, that the offending barrier or practice was job related or a business necessity, and cited three Supreme Court decisions for this premise. (App. C-5)

The Court of Appeals' Opinion at Part C.1. regarding disparate impact, (App. C-5-9), compels the conclusion that *Loftis* is entitled to prevail.

"In sum, the school district's statistical evidence failed to refute *Loftis*' *prima facie* case of disparate impact because it left untouched two aspects of that case. The school district's statistical evidence (as described by the district court) did not address the



complete promotion process. Nor did it address the subgroup of white females as opposed to whites or females, although the district court found that Loftis had made out a prima facie case of discrimination against white females." (App. C-7)

The Court of Appeals also correctly held that:

"The district court used an incorrect legal standard in reaching its result. A prima facie case of disparate impact is not rebutted by showing that no lesser qualified applicants were promoted. The practice must be shown to be job related. (See *Albermarle*, 422 U.S. at 425.) Nor do 'existing social factors' provide a basis for overcoming a prima facie case. The district court cites no authority for this proposition, nor do the appellees attempt to defend it." (App. C-8)

The error in the Appellate Court's Opinion, where factual findings or substitution of judgment on behalf of the District Court were made, is that it:

"...interpret(s) these statements of the district court to be a finding of business necessity for the school district's failure to promote Loftis through the direct appointment process." (App. C-8)

Implicit in the Court of Appeals' Opinion is that Loftis could not prevail in the disparate impact case unless she also prevailed in the disparate treatment case, a theory that has been repeatedly and consistently rejected. The Court of Appeals gave *no citations* in support of its theory and its substitution of judgment. It is a serious error for the Court of Appeals to permit the employer to rebut Loftis' prima facie case based a comparison between Loftis and a hypothetical ideal or perfect candidate. This after the fact comparison permits the employer to immunize itself from Title VII liability. (App. C-8)

In *Watson v. Fort Worth Bank and Trust*, 487 U.S. —, 108 S.Ct. 2777 (1988), the Supreme Court recognized that different legal standards apply to Title VII disparate impact analysis and disparate treatment analysis, and that a plaintiff is entitled to use either or both approaches. In *Watson*, the Supreme Court ruled that the individual plaintiff Watson could pursue her disparate impact claim even though she was unsuccessful in her disparate treatment claim.

**B. Having established a prima facie case against a multiple-component promotion system, the Court of Appeals cannot engage in factfinding to rebut the legal deficiencies in the multiple-component promotion system.**

In this case, the Court of Appeals' Opinion also substituted its judgment on another matter pertaining to the rebuttal requirement in a multiple component promotion system. *Connecticut v. Teal*, 457 U.S. 441, 450, 102 S.Ct. 2525, 2532 (1982) and *Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. —, 109 S.Ct. 2115, 2124 (1989), require that every proven offending barrier or requirement in a multiple component promotion system be addressed by the employer in its rebuttal. In this case, the Court of Appeals erroneously concluded, in direct contradiction to *Teal* and *Wards Cove*, that only one barrier, the direct appointment barrier, need be considered. (App. C-8) The other four barriers in the five barrier system, and the total promotion system, were not considered by the Court of Appeals, despite Loftis having established a prima facie case against these barriers. By 1984, the District through its own Report and comments by then Superintendent Handler acknowledged,

*"stated perceptions that current promotional procedures lack validity, do not select the best qualified candidates and do not provide equal access to all candidates."* (App. F-26, Ex. 50); see also (App. F-30-37, Ex. 432) *"Report of a Study of Certificated Promotional Policies and*



*Procedures*", Los Angeles Unified School District, March, 1984.)

'One of the four barriers that was overlooked in the required rebuttal was the recruitment-training barrier, the *first* and most important *step* in the promotion process, where statistical evidence demonstrated that substantial, continued "chilling" of white females occurred for the five promotion cycles between 1972-1979, as demonstrated by the application flow rate differences. *Griffin v. Carlin*, 755 F.2d 1516, 1526 (CA11 1985) states:

"... the court erred as a matter of law because it excluded the *first step* of the promotion process, that of getting on the supervisory register... When promotions to supervisory positions are made almost exclusively from the internal work force and when the primary qualification for promotion is *experience* in the craft work force, the appropriate comparison is to this *work force* rather than to those on the supervisory register *who have already been screened*..." (Emp. added.)

The District Court recognized the importance of the recruitment-training barrier when it found:

"Since any applicant's access to administrative *experience* increases the chance of promotion and is within the *sole discretion* of school principals and other supervisors, applicants are dependent upon the latter's good will and fair dealing." (Emp. added.) (App. A-6)

Approximately 25 percent of all the 1972-80 teachers promoted to assistant principal and principal progressed through the direct appointment barrier and were exempt from the training and experience committee barrier. In *Griggs v. Duke Power Co.*, 40 U.S. 424, 431-432, 91 S.Ct. 849 (1971), it was held that the business necessity for an offending barrier or requirement could not be established by an employer when current employees performed satisfactorily without meeting the requirement.

## II.

**AFTER-THE-FACT RATIONALE MUST NOT BE UTILIZED BY THE EMPLOYER TO DEFEAT A PRIMA FACIE CASE OF INTENTIONAL DISCRIMINATION.**

The disparate treatment analysis by the District Court and Court of Appeals was fatally flawed since it relied on adhominem, subjective and speculative belief that arose in 1981, a year after Loftis filed her January, 1980, EEOC Complaint. The courts erred when they failed to follow the requirements of *Texas Department of Com. Affairs v. Burdine*, 450 U.S. 248, 258, 101 S.Ct. 1089, 1096 (1981) and *Price Waterhouse v. Hopkins*, 490 U.S. \_\_\_, 109 S.Ct. 1775, 1785 (1989).

*Burdine* requires that a "clear and reasonably specific" reason be produced by the employer in the face of a prima facie case (450 U.S. at 258, 101 S.Ct. at 1096.) *Hopkins* requires that the critical inquiry is whether race or sex "was a factor in the employment decision *at the moment it was made.*" (490 U.S. at \_\_\_, 109 S. Ct. at 1785, Emp. in original.)

Loftis established prima facie cases for ten different administrative positions between 1964-80. None of the witnesses at the trial had any personal knowledge as to the actual reasons Loftis was rejected for the ten positions when the selections between candidates were made. The witnesses at the trial could only speculate, after-the-fact, as to the reason. Even the results of the promotion cycle route, the training and experience committee barrier, were merely a number, and failed to be a "clear and reasonably specific" reason as required by *Burdine*.

The findings that other candidates for administrative positions were "better qualified" are not supported by the evidence, but are based on speculation. (App. A-33) Other candidates' qualifications at the time of selection were not

listed, compared, nor the actual reason for selection known or produced. *From 1972-80, the District promoted over 576 teachers to the position of entry-level elementary administrators. No testimony was offered to the effect that all the successful applicants were equally or better qualified than Loftis at the time of selection or promotion.* The comparison between Loftis and the ideal or perfect applicant instead of real applicants will always permit the employer to immunize itself from liability.

Access to promotional experience was totally controlled by the District in the recruitment training component, as was found by the District Court. (App. A-6) The District did not even attempt to prove "equal access" to promotional experience. There was no validation of the recruitment-training barrier or any other offending barrier. The District Court merely speculated that if Loftis had additional teaching experience, such as Title I experience, she might have benefited.

Loftis proved her human relations abilities by actually successfully serving in quasi-administrative positions at Dominguez School, in addition to her 20 outstanding 1958-84 written performance evaluations that commended her in her relations with others. Loftis served as the Dominguez School's testing coordinator for three and a half years, 1980-83, as the substitute principal for a year and a half, from January, 1981 to June, 1982, and was nominated for the faculty ombudsman position, the faculty representative, in September 1984, but declined because of the upcoming October, 1984 trial. Principal Zikas' 1981 and 1983 written evaluations of Loftis were positive, and did not mention "human relations." See *Stallworth v. Shuler*, 777 F.2d 1431, 1434 (CA11 1985), where actual performance dispelled the speculation regarding white faculty acceptance of a black principal.

## III.

**REGENCY OF EXPERIENCE CANNOT BE APPLIED AFTER-THE-FACT TO DISQUALIFY AN OTHERWISE QUALIFIED CANDIDATE FOR A SCHOOL ADMINISTRATIVE POSITION.**

Loftis is entitled to prevail in her claim for age discrimination since she proved that there were two different practices that harmed her individually (disparate treatment) as well as harmed older persons in general (disparate impact), and there was no proof of business necessity or legitimate employment goals for either practice by the District. (29 U.S.C. 623(a); 631(a).)

The two harmful practices are both in the promotion cycle route. First, candidates are intentionally limited in their applications to listing only their last ten years of promotional experience. (App. A-7,25,32) Earlier experience receives no credit. The second offending practice is the requirement that candidates submit a completely new application each time they wish to be considered, including entirely new references/recommendations from their past supervisors who may have retired or are deceased which was the case with Loftis' supervisors. The District Court and Court of Appeals failed to make any ruling on the second practice. (App. A-7,25,32; App. III-10)

The ten-year limitation policy is discriminatory *on its face* for members of the protected group, persons 40 to 70 years of age, including Loftis, since older persons are purposely prevented from having an equal footing. *Geller v. Markham*, 635 F.2d 1027 (CA2 1980).

This Court, in *Griggs v. Duke Power Company*, 401 U.S. 424, 431-432, 91 S.Ct. 849 (1971), ruled that business necessity could not be established for any requirement or practice where persons without the requirement performed satisfactorily. (See also the EEOC Uniform Guidelines at 29 C.F.R., 1607.5(F), (H), and 1607.11; (App. E-15-16)

Administrators that performed satisfactorily without meeting the ten-year limitation rule include the 25 percent of the promotees to assistant principal and principal between 1972-80 that progressed through the direct appointment barrier, as well as many of the administrators at the trial, including the Defendants, who testified that they had no classroom teaching experience within the last ten years.

Petitioner Loftis established a *prima facie* case of willful disparate treatment based on age under the four-step procedure of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). (See also, *Cuddy v. Carmen*, 762 F.2d 119 (D.C. CA 1985).) The District's admitted policy of the ten-year limitation rule is *direct evidence* of willful, purposeful, age discrimination in the promotion cycle route. (29 U.S.C. 623, 631.)

There was no evidence that rebutted the *prima facie* case. None of the District's witnesses had any voting power or personal knowledge of the reasons actually used at the time of Loftis' rejection by the T & E Committee procedure. Mere speculation is not sufficient or relevant. Candidates under 40 years of age were selected for assistant principal in all five of the 1972-79 promotion cycles. *Texas Dept. of Community Affairs v. Burdine, supra*, requires a ruling in the Plaintiff's favor when a *prima facie* case is met with "silence" (at 254) or when no "clear and reasonably specific reason" (at 258) is produced.

Further, since there was *direct evidence* of age discrimination, the burden was on the District to prove that the same decision would have been reached in the absence of that factor. *Price Waterhouse v. Hopkins, supra*, 490 U.S. —, 109 S.Ct. at 1789.

## IV.

**THE DISTRICT ALSO VIOLATED TITLE IX OF THE  
EDUCATION AMENDMENTS OF 1972 (20 U.S.C.  
1681).**

In *North Haven Board of Education v. Bell*, 456 U.S. 509, 529, 102 S.Ct. 1912, 1922-1923 (1982), the Supreme Court held "that employment discrimination comes within the prohibition of Title IX." (20 U.S.C. 1681, et seq.) For the reasons stated in Arguments I-III, Plaintiff also proved a violation of Title IX of the Education Amendments of 1972.

## V.

**ALL OF THE INDIVIDUAL DEFENDANTS HAD REC-  
OMMENDATION, ASSIGNMENT AND OTHER AU-  
THORITY OVER THE PROMOTION PROCESS.  
THEY WERE DELIBERATELY INDIFFERENT IN  
THEIR ACTS OR OMISSIONS AND THEY LACK  
QUALIFIED IMMUNITY.**

The District Court found that *prima facie* cases of intentional discrimination had been established against Defendants Lingel and the District under 42 U.S.C. 1981 and 1983, and against the District under Title VII. (App. A-30) However, Lingel testified that he had *caused* approximately 50 percent of his assistant principals and principals in Region A, to be white females at the time of the trial, approximately five years after Loftis had filed her January, 1980, EEOC Complaint. The District Court erred and found that these after-the-fact, irrelevant statistics for the one Region (which is not a separate legal entity or an employer) rebutted the *prima facie* cases against Lingel and the entire District. The statistical evidence for the total District, eight Regions, contrasted sharply with Lingel's testimony. Further, the District Court disregarded *Connecticut v. Teal*, *supra*, at 455, 102 S.Ct. at 2534, that:



"A racially balanced work force cannot immunize an employer from liability for specific acts of discrimination."

With the exception of Respondent Handler the District Court found that each of the individual respondents had recommendation, assignment, and other authority in the promotion system. The District Court and Court of Appeals found that these administrators, including the respondents, possessed the promotion system authority and *caused* the claimed resulting impact. (App. C-4; App. A-7, 13, 14)

Undisputed written evidence demonstrated that Associate Superintendent Handler, who soon thereafter became the Superintendent of the District, had direct and continuing authority and control over the entire promotion system when Loftis conferred with him in his office in June, 1975, regarding the conspiracy led by Deputy Region Superintendent Gilbert to deprive Loftis from having promotional opportunities because of her race and sex. (App. A-10, 21, 22; 42 U.S.C. 1985(3).) Handler had specific knowledge of the conspiracy, had the power to remedy, and did nothing except to advise Loftis to leave the District and forfeit her 17 years of seniority with the District in violation of 42 U.S.C. 1986. The District Court clearly erred in finding: "He [Handler] was not directly involved in the promotion process at the time." (App. A-10, 21, 22) Exhibit 24, dated July 8, 1975, was the District's official promotion announcement notice, signed and approved solely by Handler. (App. F-5-6, Ex. 24) In *Smith v. Wade*, 461 U.S. 30, 103 S.Ct. 1625, 1640 (1983) it was held that damages may be awarded under 42 U.S.C. 1983 when the defendant's act or omission "involved reckless or callous indifference."

Each of the seven individual respondents lacked qualified immunity. Under limited circumstances, governmental officials have good faith immunity, but the facts in this case clearly show that the defendants were highly educated administrators, that they knowingly acted in concert to

freeze-out Loftis from having equal employment opportunities because of her race, sex and age, and that they knew or should have known that they should not have used their authority to discriminate. For example, Lingel's harmful 1981 promotion reference (App. F-1-2, Ex. 1) was made after he was served as a Defendant. His conduct violated 42 U.S.C. 1981, 1983, 2000e-2(a) and 2000e-3(a). The administrators are not entitled to qualified immunity under *Procunier v. Navarette*, 434 U.S. 555, 98 S.Ct. 855 (1978).

Another example of the wrongdoing by these administrators is the situation regarding the promotion cycle announcement. Although Principal Hoskins claimed that the promotion announcement had been posted, monthly photographs of the school's bulletin board demonstrated that it had never been posted. It was required to be posted for a two-month period. Further, Hoskins' handwritten note on the announcement that he personally delivered to Loftis in her classroom two weeks *after* the closing date for filing an application contained no pinholes.

## VI.

### **DAMAGES FOR HUMILIATION, MENTAL ANGUISH AND EMBARRASSMENT ARE RECOVERABLE IN A CLAIM FOR INTENTIONAL DISCRIMINATION.**

Petitioner is entitled to prevail in her claim for intentional and negligent infliction of emotional distress since she suffered intentional discrimination, a violation of her federal and state civil rights (42 U.S.C. 1983; Cal. Government Code §§ 12900, 12940, 12943.) The District Court and Court of Appeals erred in their standards, requiring a showing of sudden physical harm or monetary loss, with an "objectively verifiable manifestation." (App. A-22, 23; App. C-9) The findings were clearly erroneous and wrong as a matter of law based upon the record of Loftis' humiliation,



mental anguish and embarrassment. *Cary v. Piphus*, 435 U.S. 247, 265, 98 S.Ct. 1042, 1052 (1978).

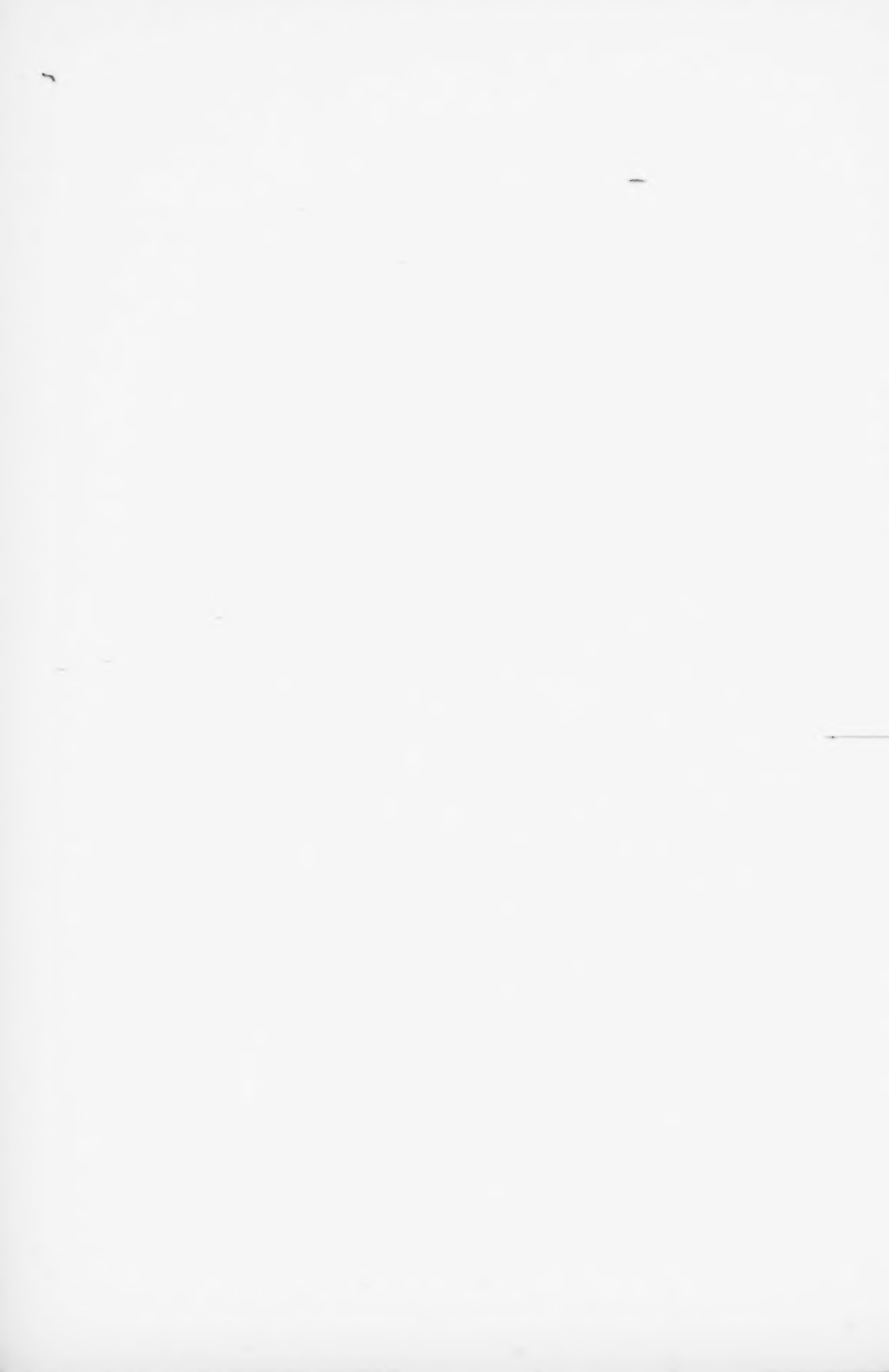
### CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

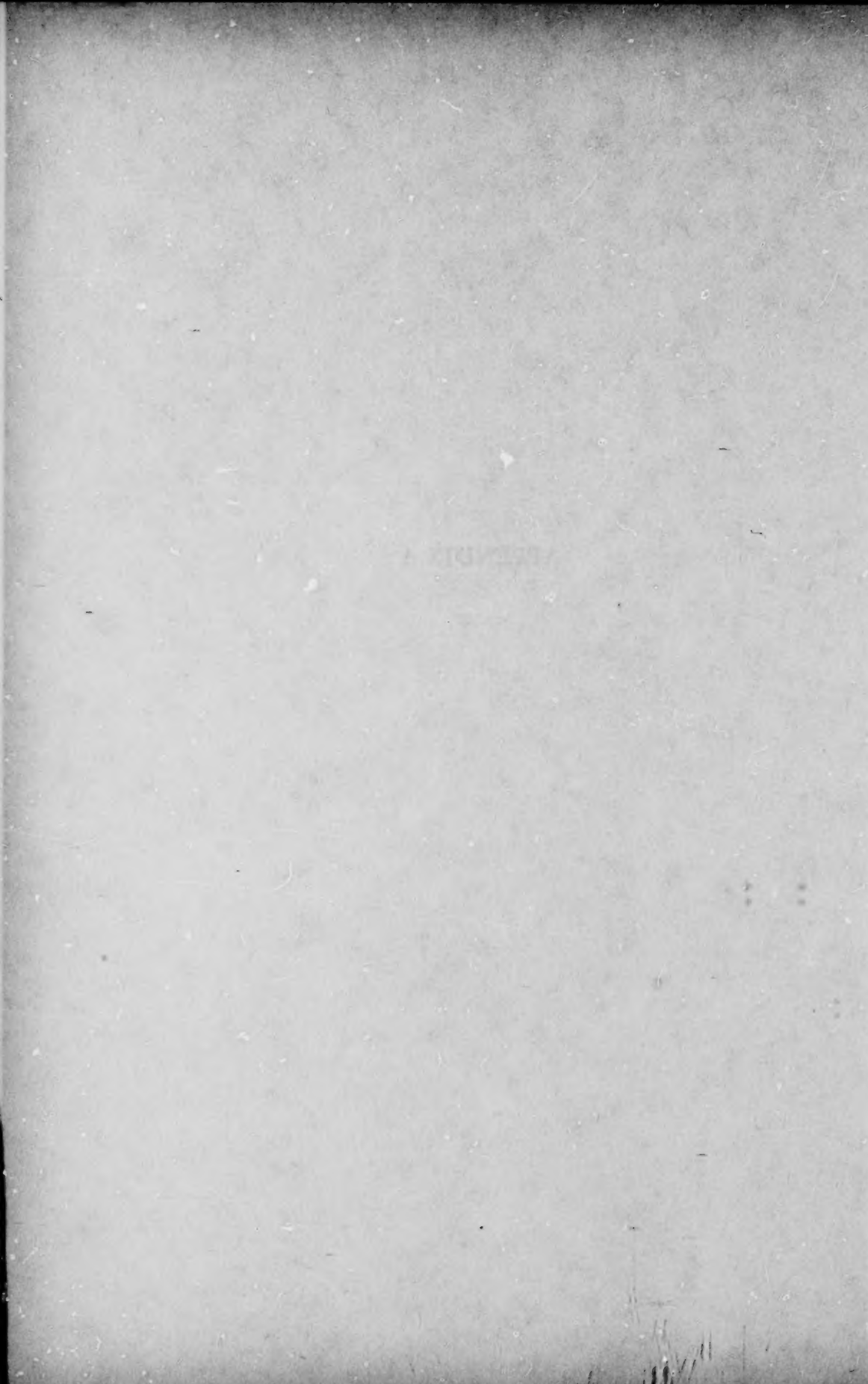
Respectfully submitted,

PARKER AND COVERT

By: SPENCER E. COVERT  
1901 EAST FOURTH STREET  
SUITE 312  
SANTA ANA, CALIFORNIA 92705  
(714) 973-2137  
*Attorney for Petitioner*



## **APPENDIX A**



No. CV 81-5071-K

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**SHIRLEY LOFTIS,**  
*Plaintiff,*

**VS.**

**LOS ANGELES UNIFIED  
SCHOOL DISTRICT, et al.,**  
*Defendants.*

**MEMORANDUM OF OPINION; FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

Filed September 19, 1986, Clerk, U.S. District Court,  
Central District. By \_\_\_\_\_, Deputy.

The above-entitled case came on regularly for trial by the Court, sitting without a jury, before the Honorable John R. Kronenberg, United States Magistrate, as the United States District Court for all purposes in this action pursuant to the stipulation of the parties entered on September 20, 1984.<sup>1</sup> The trial was bifurcated and the liability phase was tried first. Testimony was taken for 19 trial days, there were two additional hearings for extended oral argument. Final argument was heard on November 20, 1984 and the question of liability was submitted.

Plaintiff was represented by Parker and Covert by Spencer E. Covert and Susan L. Straight, defendants were represented by DeWitt W. Clinton by Richard K. Mason, Principal Deputy County Counsel.

At the close of plaintiff's case on October 9, 1984, defendants moved for a dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion was granted in part by the Court which dismissed all causes of action

---

<sup>1</sup>A jury was waived by all parties as to all causes of action.

against named defendants Milton Neuschwander, Sydney C. Hoskins and Kirk Van Sooy and count seven (alleging retaliation and harassment in violation of 42 U.S.C. § 2000e-3 and 29 U.S.C. § 623) as to all remaining defendants except the school district. All causes of action against defendants Handler, Gilbert and Lilley had been previously dismissed by the Court in granting partial summary judgment based upon the fifth amended complaint and the other pleadings and exhibits then on file. The defense then proceeded as to all of the remaining causes of the action against the remaining defendants, Los Angeles Unified School District and John J. Lingel.

The Court having duly considered all of the evidence, both testimonial and documentary, as well as the credibility of the witnesses, and having heard and considered the oral and written argument of counsel makes the following findings of fact and conclusions of law. Fed. R. Civ. P. 52(a):

## I. PARTIES

Plaintiff Shirley Loftis is a white female citizen of the United States, 56 years of age, who is, and has at all times relevant been employed by the Los Angeles Unified School District (L.A.U.S.D.) as an elementary school teacher.

Defendant Los Angeles Unified School District is a public entity located within the jurisdiction of this Court, organized and operating under the laws of the State of California.

Defendant John Lingel has been at all times relevant an employee of the district. He is currently the Regional Superintendent for that portion of the district formerly termed Area 1 and now referred to as Region A, a post he has had since July, 1978. As such, he supervises principals of the schools in the Region.

Defendant Kirk Van Sooy is currently a retired former employee of the district. He was plaintiff's principal at Dominguez School from January 1979 through October of 1980 at which time he left on illness leave of absence. He retired from the district in January of 1981.

Defendant Milton Neuschwander is currently employed by the district as a principal. He was plaintiff's principal at Amestoy School during the 1975 school year.

Defendant Sydney C. Hoskins is currently a retired former employee of the district. He was plaintiff's principal at Dominguez School from October, 1976 through January of 1979. He retired in June of 1984.

Former defendant Harry Handler is presently the Superintendent of Schools of the district and has been at all relevant times a supervising employee of the district.

Former defendant Ira N. Gilbert is currently a retired former employee of the district. At all relevant times, up until January 1, 1984 when he retired, he was an employee of the district in an administrative capacity.

Former defendant Clayton Lilly is currently and, at all relevant times, was an employee of the district. He is currently the Supervisor of Employee Relations for the district, a position he has held since approximately 1981. Prior to that time, he was a field specialist serving the geographic region in which the plaintiff served.

Each of the named individual defendants are white males who have had the responsibility of supervising and evaluating persons of all races and both sexes.

All of the aforesaid defendants reside within the jurisdiction of this Court.



## II.

### BACKGROUND OF THIS ACTION

Plaintiff filed a claim with the Equal Employment Opportunity Commission ("EEOC") on January 24, 1980, alleging discrimination due to age, sex and/or race. (Exh. 382.) After a determination that there was no reasonable cause found to believe that her allegations were true she received a Notice of Right to Sue, dated June 29, 1981. The complaint in this action was filed on September 29, 1981.

Plaintiff seeks damages and injunctive relief pursuant to 20 U.S.C. § 1681, 29 U.S.C. § 623 and 42 U.S.C. §§ 1981, 1983, 1985(3), 1986, 2000e-2 and 2000e-3 as well as the fourteenth amendment to the United States Constitution. Plaintiff also alleges as pendent claims a violation of California Government Code §§ 12940 and 12941 and seeks recovery on the theory of an implied covenant of good faith and fair dealing under California law as interpreted by the state courts, alleging the intentional and negligent infliction of emotional distress.

This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and the doctrine of pendent jurisdiction. Venue is properly laid in this district. 28 U.S.C. § 1391(b).

## III.

### INDIVIDUAL DEFENDANTS

#### A. FINDINGS OF FACT<sup>2</sup>

Plaintiff was first employed as an elementary school teacher by the Los Angeles Unified School District in 1958. She served continuously from 1958 until the 1964-1965

---

<sup>2</sup>The findings of fact are based on the exhibits, the Court's notes and tape recordings of testimony.

school year during which time she took a one year spousal leave. When plaintiff returned she continued to serve as a teacher until January of 1969 at which time she took a one year sebatical leave. She continued on an approved leave of absence through September of 1976 with the exception of a semester of service as a teacher advisor to student interns from January to June of 1970 and one year of service in the year 1974-1975 as a teacher. She has served continuously since September, 1976 as an elementary teacher at Dominguez School. All of her services has been in the Harbor area of the district, known as Area I, Area A or Region A.<sup>3</sup> (Exh. 425.) It is one of eight regions in the school system, each with its own superintendent who reports to the superintendent of schools.

During her tenure as a school teacher, plaintiff applied for or sought promotion to Assistant Principal, Elementary, in 1966, 1968, 1977, 1979 and 1981 and "acting" assignments in 1972, 1974, 1975 and 1977. She has never been promoted by the district.

Plaintiff has B.A. and M.S. degrees as well as an administrative Credential for K-6 and K-14 grades. She applied for and was accepted in the Los Angeles Unified School District's Administrator Development Program in 1966. (Exhs. 300-303.) She has received excellent performance evaluations from her supervisors while in school and during her participation in the district's Administrative Development Programs.

Promotions within the Los Angeles Unified School District to the position of assistant principal, elementary, are always from its own certified elementary work force. The L.A.U.S.D. promotes via direct appointment and from a list developed through a cyclic competitive examination (appli-

---

<sup>3</sup>Region A currently has over 48,000 pupils and 2,000 teachers. (Exh. 276.)

cation) process and maintained for at least two years. Board Rule 4206 (Exh. 58). Board Rules provide for appointment from the top five names on the list. There is also a direct acting appointment system under Board Rule 4213 ("limited acting") which is supervisor initiated. One who possesses all of the qualifications is appointed by the Board of Education and acts until an eligibility list is established. (Exh. 55.) Board Rule 4214 applies to direct appointments made after an examination has produced an eligible list, but such appointments are made without regard to the "rule of five" — from the top five on the list — and are called "non-list" appointments. (Exh. 56.) Plaintiff has requested direct appointment several times but has never received it.

There is also a "sub-acting" appointment by which a person is temporarily placed in a position until a regular appointment can be made from the existing list. Such an appointment does not require possession of all the prescribed qualifications. It is designed to preserve the status quo until a permanent appointment can be made.

Since any applicant's access to administrative experience increases the change of promotion and is within the sole discretion of school principals and other supervisors, applicants are dependent upon the latter's good will and fair dealing.

There is no fail-safe mechanism to see that notice of promotional opportunities is given to all potential applicants. Notice is dependent upon posting by the various schools and departments.

Competitive applications are reviewed by the Training and Experience (T&E) Committee which reviews applications and references of those who meet the minimum qualifications, rating on a five step scale ranging from "not endorsed" to "endorsed with enthusiasm." This develops the "eligible list." Appointments are then made from the top

five. The Committee receives no written guidelines to evaluate applicants, but it is briefed. (Exh. 430.) Although an attempt is made to delete them, race, age and sex can usually be deduced from accompanying references, i.e. to schools where the racial makeup of staff is generally known as of the time of the applicants service there.

The Committee is also instructed to consider the recency of experience of a candidate with a ten year cut-off. This has the result of making less valuable the experience of older persons acquired early in their careers. The dating of this experience is also an indication of the probable age of the applicant.

The committee rating forms for evaluation of training and experience contain criteria used for evaluation in the form of a graphic rating scale, divided into five categories and ranging from the negative "not endorsed" to the positive "endorsed with enthusiasm."

This entire promotional evaluation apparatus is under the direction of Mr. Harry Nishisaka who has been Acting Supervisor of the district's Promotion Selective Office since 1978. He also acts as the sole appellate tribunal for those protesting the examination results. There is no further appeal. He received a direct acting appointment without benefit of a competitive examination. His office is in a so-called "single position" administrative class. The district, after making such an appointment, may not establish a list for years. This, in effect, creates a supervisory group who owe their appointment and, to some extent, retention, to the whim of the appointing authority.

In large measure, plaintiff's case is predicated upon the proposition that persons in administrative positions failed in their duty to assist her in qualifying herself for advancement by denying her low level supervisory positions (e.g. substitute principal, a person designated by the principal to

act in her absence) over which they had the power of appointment.<sup>4</sup> Evidence is offered which, it is claimed, shows that members of minority races were given these positions even though the plaintiff was available and better qualified.

Plaintiff complains that the individual defendants in this lawsuit discriminated against her due to her sex, race and/or age and prevented her advancement. The factual evidence presented is made up of numerous incidents which, it is urged, prove that the individual defendants discriminated against plaintiff, failed to provide her with promotional opportunities and, in the case of defendants Handler, Lingel and Gilbert, failed to give her a direct appointment without an examination.

Plaintiff presents evidence that several remarks were made in her presence to prove that ambiguous acts, alleged to be discriminatory, were prompted by and directed against her sex, race or age. In 1979, when she sought a direct appointment from Dr. Lingel, she testified that he refused and told plaintiff "to be candid, there are few promotional opportunities for white persons." In 1963, her principal, Mr. Miller, is said to have told plaintiff that women seeking positions as principal "should be older than men." At an orientation meeting in the fall of 1981, Mr. Nishisaka, a minority employee, when asked how he secured his position as acting supervisor, is reported to have told the assembled group "I was annointed." In 1972 or 1973, when plaintiff was working under Mr. Frank Fitten in the district office, she testified that she heard him say that he would have promoted her but "we had to employ a minority."

In the fall of 1974, plaintiff, returning from a four-year illness leave of absence, asked former defendant Gilbert, at

---

<sup>4</sup>Such an appointment can very well lead to one as assistant or "acting" principal and to the full position itself.

that time a deputy area administrator, for a direct appointment, without examination, to principal or other similar position. Mr. Gilbert did not have the power to make such an appointment. He told plaintiff that there had been changes in the school system since she last worked there and that she now needed certain types of quasi-administrative experience offered at Title I (now Chapter I)<sup>5</sup> schools in order to facilitate promotion. He offered to effectuate such a placement but told her that it would have to be out of Area I as there were no Title I appointments available locally. He also recommended that she attend workshops and special classes.

At three or four meetings held during the years 1978 to 1982, while plaintiff was teaching at Dominguez, when they discussed her professional advancement, Dr. Lingel gave plaintiff the same advice. Gilbert was instructed by Dr. Lingel to accommodate plaintiff's transfer to a Title I school should she apply. Plaintiff did not apply. She did not want to leave the area.<sup>6</sup> The evidence is conclusive that Title I schools afford a significant opportunity for experience leading to administrative advancement since they provided for more staff positions and quasi-administrative assignments.

In 1974, for reasons not material to the issues before the Court, after a brief assignment at Broadacres School, plaintiff was transferred to Amestoy School for the remainder of the school year. Both were in Area I but neither were Title I

---

<sup>5</sup>Those which receive special funding from the federal government and have additional staff.

<sup>6</sup>Plaintiff's testimony regarding the title I transfer issue is confusing and contradictory, e.g. her deposition testimony Vol. II, P. 53, l. 4 to p. 58, l. 4; p. 93, l. 17 to p. 99, l. 15; and Vol. III, p. 103, l. 10 to p. 109, l. 13; and p. 129, ll. 8-21. The Court specifically finds that she was advised to seek transfer to a Title I school on numerous occasions and yet never made a direct request.



schools. During the 1975-76 year, plaintiff took her final one year leave of absence.

In June of 1975, plaintiff had a personal interview with Dr. Handler (at that time the assistant superintendent for instruction) briefing him with her background, her experience and her failure at promotion. He indicated that, considering her training and experience, he could not understand why she had not gotten ahead. He suggested that if she was interested in promotion perhaps she should consider leaving the district. He was not directly involved in the promotional process at the time.

After her return from leave in 1976 and prior to her assignment to Dominguez School, plaintiff sought information from former defendants Lilley and Gilbert regarding promotional opportunities at that location. She was assured that Dominguez, which was not a Title I school but which was in Area I, was a "winner" and took the assignment. However, Dominguez presented limited opportunity for assignments leading to promotion.

Plaintiff's return from leave was late and she had to secure a health clearance. This further delayed her return to work. This was in accordance with district regulations. No specific prejudice or discrimination is shown.

After plaintiff came to Dominguez School, Mr. Hoskins, her principal, kept two other persons (male and female, both white) as substitute principals and did not appoint plaintiff to that post. The two, who "knew the school," were team teacher in the sixth grade.<sup>7</sup> Hoskins consulted with faculty members when considering plaintiff for other supervisory positions. He received a negative reaction but plaintiff was

---

<sup>7</sup>A "Substitute principal" is a faculty member selected by the principal to act in his or her absence. Selection is discretionary. To be effective, the person selected must be able to relate well to the rest of the faculty.



given other special assignments available at Dominguez, including the post of Assistant Principal for Administrative Detail.

In January of 1979, Mr. Hoskins was replaced as principal by defendant Van Sooy who remained at the school until October of 1980 when he left on illness leave. Van Sooy discussed promotional opportunities with plaintiff but he retained the incumbent substitute principal (a white female teacher, who had been at the school for many years), telling plaintiff that he "had a good thing going and saw no reason to change." He did give plaintiff various other opportunities helpful to her promotional advancement but did not designate her to attend workshops. Instead, Shirley Carlock, a black female who had come to Dominguez in 1976 at the request of Mr. Hoskins, was sent.

Van Sooy called plaintiff's attention to the current Administrative Development Program but she was not interested because it would require a transfer out of the area to an inner city school. This program as then constituted was a result of a *Crawford v. Board of Education*, 17 Cal.3d 280, 130 Cal. Rptr. 724 (1976). (Exh. 277.) Plaintiff, who had participated in such a program in the 1960s could benefit from it because of the enormous changes in the school system since that time. When the teacher acting as substitute principal retired in June of 1980, Mr. Van Sooy named Carlock to the position. He had observed her performance and, in his professional judgment, she was the better qualified and her promotion was in the best interest of the school. There is no evidence that her sex, race or age were in any way involved in his decision. Carlock became acting principal after Van Sooy left unexpectedly due to illness. He had recommended her for the position because she had already been successful as his substitute. She was eventually replaced by Mrs. Joyce Zikas, a white female already a school principal, who continued, through the date of trial, to be

principal at Dominguez where plaintiff remained as an elementary school teacher. Carlock reverted to substitute principal under Zikas.

At plaintiff's request, Mrs. Zikas named her as substitute principal in 1981 for the spring semester. (Exh. 166.) This appointment was renewed through the spring of 1982 during which time Zikas met with plaintiff for approximately three months on a weekly basis to discuss her concerns and to assist her in any way possible with administrative promotion. During this time there was faculty opposition. When plaintiff's term was up, Mrs. Zikas reappointed Mrs. Carlock who had the support and cooperation of the faculty.

Plaintiff alleges that, after she filed her claim of discrimination, the district, through Zikas, engaged in a program of harrassment and retaliation aimed at plaintiff. Cited are incidents of classroom observation, the taking of stenographic transcripts of conferences with the plaintiff and her students, the mention of plaintiff at faculty meetings and the solicitation of comments from plaintiff's students regarding her teaching performance.

Plaintiff had three conferences with Neuschwander concerning a 1979 promotional reference he had furnished at her request. Although she had worked with him while he was her principal during the 1961-62 school year at Victoria Avenue School, when asked his opinion of certain of her qualifications he had stated that he had not had the opportunity to observe them. This would have an adverse affect on plaintiff's chances for promotion. He refused to change his remarks even though it was pointed out to him that he had given plaintiff an outstanding recommendation in 1966 based on his observations in 1961. (Exh. 304.)

While the Board of Education is the ultimate appointing authority with respect to assistant principal and principal, elementary, Dr. Lingel as Area/Regional Superintendent

has a significant power of recommendation with regard to this Region. He also appoints his office staff.

Since his assignment to Region A in 1978, Dr. Lingel has made a significant number of recommendations and appointments. (Exh. 142.) Since 1978, of approximately 15-18 total appointments to assistant principal elementary, approximately 50% have gone to white females. Similarly, out of 25-30 appointments to principal, elementary, approximately 50% have gone to white women. There is no evidence of discrimination against white females in this appointing process.

Dr. Lingel's first significant contact with plaintiff was in 1978 after he became area superintendent. Plaintiff came to see him about her advancement. He told her that "on-site" recommendations from the people she worked with were best and not to worry about her age. At this and subsequent meetings, he indicated to her that it was not his policy to intervene in the appointment of substitute or acting principals. He has never done so. Later he was surprised to discover that she did not take his advice to transfer to a Chapter (Title) I school. She preferred to live in Area I and teach at schools nearby. He did tell her that, while there were promotional opportunities for white women, there was less chance for white males because of affirmative action.

Lingel submitted a reference for plaintiff's 1981 application for promotion despite the fact that he was under no obligation to do so. (Exh. 1.) At the time, he was aware that plaintiff had filed discrimination claims and that he was a named defendant but he felt that the total lack of a recommendation by the Regional Superintendent would be detrimental to her chances.

His evaluation was significantly less enthusiastic than the one he gave in 1979 (Exh. 2) and he knew or should have known that this would quite probably make her promotion

impossible. He lowered plaintiff's ratings because of his personal observation since 1978 and what he had been told about plaintiff's relationship with her peers by Zikas, Mrs. Kitzerow (the school office manager) and a Dominguez teacher, Zal Selznick.<sup>8</sup> He concluded that the plaintiff was deficient in human relations and ability to communicate with the staff. He decided that her appointment would not be appropriate since faculty cooperation was essential.

When Zikas was transferred to Dominguez, Lingel approved the appointment. He knew of her past success as principal and that she was currently at a school that was about to be closed. He also knew that she had a 50 mile commute because of an illness in her family and would appreciate being closer to home. There is no evidence that her appointment was in any way connected with plaintiff or that it was based on age, race or sex.

Lingel allowed Carlock to remain as acting principal at Dominguez for six weeks because of a two week delay in Zikas' availability.<sup>9</sup> Her retention met with almost unanimous faculty approval. (Exhs. 122, 215 and 259.)

## B. DISCUSSION

Under the "continuing violation doctrine," a systematic policy of discrimination is actionable even if some or most of the events since its inception occurred prior to the running

---

<sup>8</sup>Selznick was a union representative at the time and was aware of the fact that plaintiff was not a member. There is no evidence this colored his judgment. Nor is there any evidence that he, Zikas or Kitzerow were motivated by plaintiff's race, age, sex or her participation in any protected activity. They were concerned that plaintiff could not gain the cooperation of the majority of the faculty and staff.

<sup>9</sup>Anything in excess of three weeks required school board approval. Carlock "acted" for six weeks without it. This was an extended "sub-acting" appointment. It was justified as an emergency measure under the circumstances.

of the statute of limitations. Therefore, a challenge to continuing systematic discrimination is timely if brought by a present employee. *Williams v. Owens-illinois, Inc.*, 665 F.2d 918 (9th Cir. 1982). For this reason and because the court has reached the merits of the matter, no further discussion of the running of the statute of limitations will be necessary.

42 U.S.C. § 1981 guarantees equal rights under the law in all of the states and territories. 42 U.S.C. § 1983 prohibits the deprivation of any right, privilege or immunity guaranteed by the Constitution and laws of the United States under color of state law or by a state agency. 42 U.S.C. § 1985(3) prohibits a conspiracy to deny persons equal protection of the laws or equal privileges and immunities under the law. 42 U.S.C. § 2000e-2 prohibits discrimination in employment practices based on race, color, religion, sex or national origin. Section 2000e-3 prohibits discrimination because one has engaged in valid labor practices. 20 U.S.C. § 1681 prohibits sexual discrimination in educational programs receiving federal financial assistance. 29 U.S.C. § 623 prohibits an employer from discriminating because of an individual's age or because of participation in investigations or litigation involving employment. California Government Code § 12940 prohibits discrimination by an employer solely because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex. California Government Code § 12941 prohibits an employer from discriminating on the basis of age alone.

California law implies in all employment contracts a covenant of good faith and fair dealing. This applies against employers only and not against their individual employees. *Cleary v. American Airlines*, 111 Cal.App.3d 443, 168 Cal. Rptr. 722 (1980). It is based upon public policy as well as the terms of the agreement whether expressed or



implied. *Pugh v. See's Candies*, 116 Cal.App.3d 311, 171 Cal. Rptr 917 (1981).

The principle federal statute prohibiting discrimination in employment is Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e to 17. It generally prohibits discrimination on the basis of age, race, national origin, sex and religion by employers, unions and employment agencies in all aspects of employment. Other federal constitutional provisions, statutes and regulations also prohibit discrimination in employment but they do so through narrower prohibitions that apply to fewer employers. These other sources of federal law have been interpreted and applied consistently with Title VII. They have also been influenced by doctrines developed under Title VII, in many instances to the point of adopting them in their entirety.

Among these provisions are the due process clause of the fifth amendment, the equal protection clause of the fourteenth amendment, and to a lesser extent, the religion clause of the first amendment prohibiting discrimination on the basis of race, national origin, sex, and religion by governmental employers. These prohibitions are enforced against state and local governments by the Civil Rights Act of 1871, 42 U.S.C. § 1983, which grants a private right of action for deprivation of federal rights under color of state law.

Title VII prohibits two forms of discriminatory practice: disparate treatment, or intentional discrimination, and disparate impact, or discriminatory effect. Disparate treatment employment practices are those which intentionally take into account the individual's race, national origin, sex or religion. Proof of discriminatory motive is critical and is a factual issue for the trial court. *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985). Practices which result in actionable disparate impact are those which are supposedly neutral but which have a disproportionate adverse impact on indi-

viduals of a particular race, national origin, sex or religion and are not justifiable as being a business necessity. The latter need not be intentionally discriminatory. Either theory may be applied to particular sets of facts. *Teamsters v. U.S.*, 431 U.S. 324, 335 n. 15 (1977). However, disparate impact will not apply where there is no "neutral" practice while both theories apply where a "neutral" rule is intentionally discriminatorily enforced.

The standards governing the analysis and disposition of claims of intentional disparate treatment are set forth in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). If the claimant carries his initial burden of establishing a prima facie case of intentional discrimination, he establishes a rebuttable presumption and it then becomes incumbent upon the defendant to produce evidence to show some legitimate non-discriminatory reason (a bona fide occupational qualification) for the complained of action. Once the defendant has carried this burden, it shifts back to the plaintiff to show that the stated reasons were in fact a pretext.

The initial burden of proof is satisfied if the plaintiff shows that he/she belongs to a protected class, had applied for and was qualified for a job for which the employer was seeking applicants, was rejected despite qualifications and after this rejection the position remained open and the employer continued to seek applicants from persons of plaintiff's qualifications. This may be rebutted by a showing that the person receiving the position was equally or better qualified. An employer has discretion to choose between equally qualified candidates. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

Meeting the specific *McDonnell Douglas* requirements is not the only means by which plaintiff may make the requisite prima facie showing. 431 U.S. at 358. However accomplished, the plaintiff must carry the initial burden of offer-



ing evidence adequate to create an inference that an employment decision is based on discriminatory criteria which is illegal under the Act. This burden is met, when the plaintiff has shown that it is "more likely than not" that the employer's action was based on an unlawful consideration.

The plaintiff's ultimate burden remains to show by a preponderance of the evidence that the employer's action was based on unlawful discriminatory conduct, i.e. that it was not justified. Evidence that supports the employer's articulated reasons may be introduced during the plaintiff's presentation of the prima facie case and the plaintiff is required to counter such evidence and offer proof as to pretext before resting. *Correa v. Nampa School District*, 645 F.2d 814 (9th Cir. 1981).

This process of shifting the burden structures the decision making process in the district court. In those cases where both parties carry their initial burden of producing evidence of discrimination and of claimed legitimate non-discriminatory reasons, the rebuttable presumption of discrimination drops out and the court must then determine the ultimate question of disparate treatment; whether the defendant has intentionally discriminated improperly against the plaintiff. *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983).

The most common theory used to show class-wide discrimination is that of disparate impact. This theory was formulated in the Supreme Court's decision in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). Such a claim does not require proof of intentional discrimination. Discriminating impact is sufficient. Plaintiff must first show that a hiring or promotion system had an adverse impact on a protected group, e.g. a lack of objective criteria in a promotion system which results in a disparity in job promotions. The system may be defended by showing a justifying legitimate business

consideration, i.e. business necessity. *Wang v. Hoffman*, 694 F.2d 1146 (9th Cir. 1982).

Claims of class-wide disparate treatment usually require evidence in the form of statistics. These are also often used to prove disparate impact and can, standing alone, present to a prima facie case. *Hazelwood School District v. United States*, 433 U.S. 299 (1977).

The relevance and probative effect of statistics, however, must be determined on a case by case basis. Their usefulness depends on all of the surrounding facts and circumstances. *Teamsters v. U.S.*

The prima facie case rules differ for disparate treatment and disparate impact cases. *Lewis v. Bloomsburg Mills*, 773 F.2d 561, 572 (4th Cir. 1985). The former involve intentional discrimination and the latter ostensibly neutral practices. Each has a distinct defense — bona fide occupational qualification and business necessity.

Under either theory, the Court is required to balance the defendant justification against the national interest in equal employment opportunity for all persons. *American Federation of State, County and Municipal Employees v. State of Washington*, 578 F. Supp. 876 (W.D. WA 1983).

The *McDonnell Douglas* procedure has been applied to charges of discrimination in the academic context. *Lynn v. Regents of the University of California*, 656 F.2d 1337 (9th Cir. 1981). *Smith v. University of North Carolina*, 632 F.2d 316 (4th Cir. 1980).

After considering all of the relevant evidence, the Court finds that these named defendants, employees of the district, who supervised plaintiff and/or were asked by plaintiff to assist her in securing advancement acted in good faith and (insofar as material) in accord with the rules and regulations of the defendant District and did not intentionally or otherwise discriminate or retaliate against the plain-

tiff in the exercise of their professional judgment or in the performance of their duties for any prohibited reason, including but not limited to her age, sex or race.

The Court has examined and evaluated all of the evidence of plaintiff's contacts and experience with the named defendants and finds no evidence of conspiracy to discriminate against plaintiff for any prohibited reason, including but not limited to age, sex or race or to deprive her of any of her constitutional rights. There is no credible evidence that she was ever singled out because of her age, sex or race or that any concerted action was ever taken against her for these or any other prohibited reason.

No protected activity undertaken by plaintiff was the basis or reason for any of the acts or omissions of the defendants. There is no evidence of harrassment or retaliation.

Plaintiff constantly sought promotion. She faults those individuals and the system which she believes denied her the opportunity to qualify for and receive it. She believed that her recognized scholastic qualifications far exceeded those of successful candidates and that this should be controlling. Underlying this belief is her mistaken conviction that her credentials should be the final decisive factor and that any lack of rapport with her fellow faculty members was not particularly relevant to promotability. The latter is always a prime factor, properly taken into consideration in the interest of morale and the continued harmonious operation of the school.

The Court has no reservations about plaintiff's competence in the classroom but she continually placed too much emphasis on her recognized teaching and academic achievements in her quest for promotion, overlooking the importance of developing leadership qualities and an ability to maintain a successful working relationship with her peers at

the schools where she was employed. This was a mistake since the latter is a bona fide occupational qualification for promotion to the positions she sought. When given quasi-administrative duties, she did not distinguish herself and, on occasion, precipitated negative reaction from the faculty.

Plaintiff has not established by a preponderance of the direct factual evidence that any action or omission by the named defendants or any other employee of the district was directed at any protected status or activity of hers.

If we accept as true, the alleged "discriminatory" remarks which plaintiff alleges were made in her presence we also must find that they were casual and, on at least one occasion, misinterpreted by the plaintiff. The context in which they were made negates discriminatory intent or action by the speaker and does not imply any indication of district policy.

Dr. Lingel's submission of an evaluation in 1981 was made in good faith in the performance of his duties. One may quarrel with this decision but the evidence negates any improper motive and there is no evidence that plaintiff's chances would have improved had he not done so. Dr. Lingel's advice, appointment and recommendation procedures give no evidence of discriminatory animus against white females. This includes his decision to keep Mrs. Carlock as acting principal after Mr. Van Sooy left. Taking all bona fide occupational qualifications into consideration, she was most qualified. It was appropriate under the circumstances.

-His subsequent correspondence with plaintiff showed no sign of retaliation, discrimination or harrassment. He continued to offer to assist plaintiff even though he knew that she had filed this lawsuit. (Exhs. 109 and 388.)

In his position and under the circumstances in which the 1975 interview was held, Dr. Handler's response was not

inappropriate. He was under no duty to advise plaintiff on behalf of the district. His advice to try elsewhere was that commonly given in such situations.

There was a personality conflict between the plaintiff and various of the defendants or representatives of defendant School District which was never resolved. An illustration is the "conflict" with Zikas whose conduct was proper under the circumstances and appears to have been at times prompted by certain mannerisms and conduct of plaintiff which the former found distracting. The plaintiff had a practice of note and memo writing and of keeping a written record of all her contacts (illustrated by the voluminous evidentiary material presented in this action). Zikas told her not to write any more notes. This was a reasonable request. (Exh. 267.) Plaintiff felt that it was discrimination.

Even after plaintiff filed her claim Mrs. Zikas' response to situations which arose was at all times appropriate and consistent with her responsibility to plaintiff and to the school. There is no evidence of harrasment or retaliation because of any protected activity by plaintiff.

A Plaintiff is entitled to recover damages for serious emotional distress though there is no accompanying physical harm if the proximate cause of such serious emotional distress was the negligent conduct or wilfull violation of statutory standards by the defendants. *Molien v. Kaiser Foundation Hospitals*, 27 Cal.3d 916, 167 Cal. Rptr. 831 (1980).

There is no evidence that any of the named defendants or their employees has ever acted intentionally, outrageously or with reckless disregard so as to cause plaintiff emotional distress. Plaintiff has not suffered any monetary damage or loss as a result of her alleged emotional distress.<sup>10</sup> The

---

<sup>10</sup>See Deposition of Shirley Loftis, Vol. IV, P. 73, 11. 22-25.

latter is entirely subjective in nature, without objectively verifiable manifestation. Plaintiff has a feeling of embarrassment because she is "still in the classroom."<sup>11</sup>

Plaintiff alleges a violation of the obligation of the school district under the law of California to deal fairly and in good faith. Arbitrary conduct directed towards an employee or employees violates this covenant. *Clearly*. As indicated above, the Court finds no evidence that Dr. Lingel or the school district did not deal in good faith and fairly with the plaintiff.

Retaliation is established by showing that an employee had participated in a protected activity and that this resulted in adverse treatment. In the instant case, this would be the filing of the claim and later the lawsuit and a showing that plaintiff has been subject to adverse employment action having a casual connection with the protected activity. *Hochstadt v. Worcester Foundation*, 425 F. Supp. 318 (D. Mass. 1976). The Court finds no retaliatory conduct by Dr. Lingel or the school district or by any of the other named defendants. There is no evidence of any adverse action taken by them which was prompted by the plaintiff's filing of a grievance or this lawsuit.

In addition to plaintiff's allegations that the named individual defendants denied her the experience which would have qualified her for promotion, i.e. meaningful opportunities to enhance her chance of being promoted, she complains of her repeated failure to pass the Training and Experience ("T & E") portion of the examination process. This claim is directed against the School District.

None of the persons named as defendants is or was at any time in a position of direct authority over the promotional selection process.

---

<sup>11</sup>*Id.*, p. 67, 11. 4-26.



On behalf of the District, Mr. Nishisaka met with plaintiff to discuss results of her 1979 promotional examination. She had failed the T & E part. He gave her much the same advice as the other defendants, i.e. transfer to a Title I school and seek out sub-administrative assignments. She did not seek such a transfer.

The T & E Committee's evaluation of plaintiff's 1979 and 1981 applications demonstrates defects in the district's rating system at that time and the casual manner in which it was administered. (Exhs. 264-265). Despite the enormous task<sup>12</sup> a valid criticism of the training and experience rating method is that it is actually quite subjective. This can be demonstrated by an analysis of the ratings actually given by the six individual raters who made the evaluation in 1979. A chart of the ratings shows them to be "scattered." (Exh. 423.) They demonstrate errors known as the "central tendency" and the "halo" effect, indicating a tendency on the part of raters to adopt a uniform category in the middle of a scale and use it more or less indiscriminately whereas most applicants have both strengths and weaknesses. The reason for this may be found in the fact that the categories are vague and subjective. The words describing them have a limited meaning and do not mean the same to each rater. This can possibly be cured by using a single rater but, even in such a case, standards will shift.

Other irregularities existed in the rating system e.g. it allowed a score to be reduced because of type size although there were no specifications as to the type size that should be used and the type was the same size as that of the questions on the reference sheet. However, it is not shown that the same criteria was not applied to all applicants.

---

<sup>12</sup>There were over 400 applications for each examination and up to 800 made each final list. (Exh. 426.) The size of the list was based upon expected vacancies.



The Court finds that the rating system had many weaknesses growing out of vague standards and words whose subjective meanings may differ between raters. It was largely implemented and controlled by one individual whose qualifications are ambiguous at best. It was subjective and lacked sufficient controls or norms. Although no rating system may be completely objective, some are more so than others.

Despite its shortcoming, there is no convincing evidence that the rating procedure, itself, discriminated against plaintiff or any other applicant because of sex, race or age. Nor is there competent evidence that it has had a "chilling effect" operating against whites, women, persons over 40 years of age or any combination of these with respect to their applying for promotions. The fact that the procedure is subjective does not necessarily mean that it is discriminatory. 694 F.2d at 1148.

A possible exception is the "recency" factor, which has a potential for age discrimination in that it favors a younger person whose experience may be more "recent.". However, this has been validated as a necessary employment practice. The district has changed considerably in the last 20 years and its requirements and programs have been correspondingly altered. The "recency" factor is job related. The Court has carefully considered all of the evidence relating to the T&E examination and rating and is not convinced by a preponderance of the evidence that it is discriminatory as to any protected class or activity.

## IV.

## THE STATISTICAL EVIDENCE

## A. FINDINGS OF FACT

If two groups tend to be equally selected, their rates of selection should be similar. There are two standards in common use when statistics are offered as proof of discrimination or unequal treatment in employment practices and procedures. These are mathematicians' conventions for expressing the degree of variation from perfect randomness which can be expected in a given sample.

The 80% or four-fifths rule when applied to selection states that if the lower selection is less than 80% of the higher selection there is an inference of adverse impact.

The statistical significance rule assumes that there are five changes in a hundred that the difference could be by chance. Anything in excess of that is considered significant. The 5% rule is analyzed by use of the standard deviation test to determine if the difference reached is a significant level of reliable probability. If the difference is found to exceed 1.96 (sometimes rounded off to 2) it meets the 5% level. A 1.96 standard deviation is equivalent to a probability of only 1 in 20 of the corresponding difference being due to change. The United States Supreme Court has accepted a standard deviation difference of "greater than 2 or 3" as indicating a significant or real difference. *Castaneda v. Partida*, 430 U.S.C. § 482 (1977). Another means of checking the 5% level is the CHI square analysis. Using CHI square, the figure of 3.84 (1 in 20) or larger is significant.

The four-fifths (80%) rule speaks only to the question of adverse impact and is not intended to resolve the ultimate question of unlawful discrimination. It merely establishes a numerical basis for drawing an initial inference and for

requiring additional information. It is not intended to be controlling in all circumstances.<sup>13</sup>

A statistical analysis of administrative staffing in the Los Angeles Unified School District by race and sex covering female versus male, white versus black, white female versus black female, white female versus black male and white female versus white male for the years 1979, 1980, 1981, 1982 and 1983 (total of 25 comparisons) found that whites, white females and all females were significantly under represented in all 25 comparisons in terms of those employed in the jobs of teacher at the elementary level versus those employed as assistant principals. (Exhibit 422.) The standard deviation ranged from 3.24 to 12.23. This, however, is not a true "adverse impact" study because it is not based on the actual labor pool of qualified elementary teachers, those possessing administrative credentials.

A similar comparison was made for the years 1980, 1981, 1982 and 1983 (a total of 20) between those holding the job of elementary teacher with administrative credentials and those holding positions as assistant principal in the elementary schools. Whites, all females and white females were found to be significantly underrepresented in over half of the comparisons for the year 1984. For the four years under consideration, whites compared with black, white females compared with black females and white females compared with black males were found to be significantly underrepresented, the standard deviation ranging from 1.90 to 4.10.

When these statistics are considered alone, it may be concluded that there was an adverse impact in the promotion procedure for the position of assistant principal elementary when comparisons were made with elementary

---

<sup>13</sup>See Questions and Answers on Uniform Guidelines on Employee Selection Procedures, 44 Fed. Reg. 11996 (1979). (See Exh. 269.)

teachers with administrative credentials as a labor pool although it is conceded that these studies were not direct adverse impact analyses.

A comparison by race and sex of the labor pool with the percentage of applicants for the job of assistant principal was made for the promotion cycle 1975-6, 1976-7, 1978-9 and 1981-82 (20 comparisons). A CHI square analysis was used for this evaluation and the figures vary from 34.84 to 768.45. A CHI square is a function of both difference and chance. The larger a CHI square, the more certain that it did not occur by chance. However, a large CHI square does not necessarily represent a large difference. The lowest number of applications from were females, whites and white females with the latter most adversely affected. They have the lowest application rates. For them the likelihood of the lower rate being due to chance was less than one in a million. As indicated previously, less than 1 in 20 is considered statistically significant. It should be noted that this was not based upon the labor pool of those elementary teachers that had administrative credentials and therefore was not an adverse impact study but an inference was raised that there had been a chilling effect on the application of whites for the job of assistant principal particularly the application of qualified white females.

## B. DISCUSSION

Properly authenticated statistics showing imbalance are probative in a discrimination case as often a telltale sign of purposeful discrimination. *Teamsters*. Statistical evidence may establish a prima facie case in an individual as well as a class action discrimination case. *Davis v. Califano*, 613 F.2d 957 (D.C. Cir. 1980). However, it should not necessarily be a determinative factor. *Harper v. Transworld Airlines*, 525 F.2d 409 (8th Cir. 1975).

"[S]tatistics are not irrefutable; they come in infinite variety and, like any other kind of evidence, they may be rebutted. In short, their usefulness depends on all the surrounding facts and circumstances." 531 U.S. at 340. The ultimate test is whether the plaintiff offered testimony adequate to create an inference that employee decisions were based on discriminatory criteria illegal under the Act.

The size of the sample is important in deriving statistics. *Teamsters*. Comparisons must be relevant. The relevant labor pool must be one that is qualified for the position in issue. *Pack v. ERDA*, 566 F.2d 1111 (9th Cir. 1977). The degree of statistical disparity that warrants a finding of a prima facie case will depend upon all the circumstances. The use of the "standard deviation" for assessing the significant in a Title VII case has been approved. *Hazelwood*. However, "the mathematical conclusion that the disparity between . . . two figures is 'statistically significant' does not . . . require an apriori finding that deviations are 'legally significant.'" *United States v. Test*, 550 F.2d 577, 584 (10th Cir. 1976).

Statistics can be deceiving. Relevant factors may be excluded, e.g. the career patterns of males vs. females and black vs. white. because of factors over which the employer may have little or no control the races as well as the sexes may have different goals and perceive different paths to success.

Although their relevance was conceded, no statistical evidence was offered by either side as to the weight or effect on employment to be given these very real social factors which are prevalent in the district.

There have been great changes in the district since the 1960's. These are reflected in the current administrative and staff development programs. Numerous racially isolated minority schools have developed special requirements and a new Administrative Development Program has come out of

their needs. Greater emphasis has been placed on multiracial experience. This has changed the nature and the requirements of an administrator's job.

The ethic changes in the school district have been dramatic. Minorities, collectively, are now in the majority.

Since the nature of the job and the programs have changed, those whose last experience was in a '60's development program require retraining.

Many of the new training programs grew out of *Crawford*. They were developed to enhance the quality of teaching and administration in schools significantly affected by the Court's desegregation order. This was the program offered to plaintiff by Mr. Van Sooy which she examined and declined. (Exh. 277.)

It involved a transfer to racially isolated minority (RIM) schools which are historically difficult to staff. They are also called "PHBAO" schools (predominately Hispanic, Black, Asian and others).

It has been difficult to get teachers to transfer to these schools, especially white teachers. This difficulty must be factored into any statistical analysis showing a significant difference in application and selection rates.

The prima facie showing against Dr. Lingel and the district was largely if not entirely based upon plaintiff's statistical evidence.

The Court finds that while the statistical evidence presented by plaintiff was sufficient to make a prima facie case of intentional discrimination or adverse impact against Dr. Lingel and the L.A.U.S.D., the evidence as a whole supports a finding that there were sufficient legitimate non-



discriminatory reasons<sup>14</sup> for plaintiff's lack of advancement and they were not a pretext. The plaintiff has failed to show by a preponderance of the evidence that the employer's action was based on intentional discrimination alone and that without it, she would have been advanced. *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274 (1977); *Muntin v. State of California*, 738 F.2d 1054 (9th Cir. 1984). The prima facie case has been rebutted by a showing of "bona fide occupational qualification."

Statistics may also be used by the defendant in proving a lack of discriminatory intent. *Furno Construction Corp. v. Waters*, 438 U.S. 567 (1978).

From 1976, if not earlier, to the present, the T & E portion of the District's Elementary assistant Principal examination process has not, at any time, shown a statistically significant disproportionate impact against whites or women. There has been no "adverse impact" on whites or females during this period for the Elementary assistant Principal T & E examination, nor any "gross disparity" in passing rates adversely affecting whites or women. Statistically reliable analyses demonstrate to this Court that, in no instance from 1976 to the present with respect to the Elementary Assistant Principal T & E component, has there been adverse effect against women or whites. This Court specifically finds that the conclusions reached by defendants' witness Dr. David Friedland are true and correct under the facts of this case and the statistical evidence introduced, and hereby adopts and incorporates Dr. Friedland's conclusions, as set forth in Exhibit 158

This Court further finds that the T & E process for the Elementary Assistant Principal examination has been, since

---

<sup>14</sup>See discussion under *Parties, supra*. No prima facie showing was made against defendants Hoskins, Van Sooy, or Neuschwander as to any of the counts in the complaint. Their actions were clearly justified.



at least 1976 to the present, and specifically including the 1979 and 1981 examination, valid and job related. This Court specifically finds that the conclusions reached by Dr. Friedland as reflected in Exhibit 217 are true and correct, and hereby adopts and incorporates those conclusions, as set forth in Exhibit 217.

The Court specifically finds that there has been no statistically proven adverse impact against persons over 40 in the promotional selection process for Assistant Principal, Elementary, from 1972 to the present. (Exh. 220.)

The Court finds that claims of disparate impact such as prohibited by the various statutes have not been proven. The lack of evidence regarding material and pertinent sociological factors mitigates against a finding that such an impact exists based solely upon the statistical evidence offered. It is true that a prima facie case is established when it is demonstrated that there is a lack of objective criteria in the promotion system which results in some sort of disparity in job promotions. *Wang*. However, while the Court has found fault with the promotional system, disparate impact has not been convincingly demonstrated nor has it been demonstrated that an alternate practice with less discriminatory impact is actually viable and available. The presumption raised by plaintiff's statistics has been rebutted by defendants proof of "business necessity" and of existing social factors which invalidate the pure statistical calculations.

There is an affirmative duty to employ objective criteria for promotions. The use of subjective criteria is closely scrutinized. *Senter v. General Motors*, 532 F.2d 511 (6th Cir. 1976). The Court finds that the promotional standards currently in use in the school system are not so vague and subjective as to be unfair per se. *Johnson v. Uncle Ben's*, 628 F.2d 419 (5th Cir. 1980).

There is no showing that there was disparate impact on the labor pool based upon prohibited standards. It follows that there is no showing that such an impact in any way affected the plaintiff's employment and the evidence presented of employment practices, in general, does not show prohibited disparate impact which might impose liability in the absence of specific evidence of disparate treatment or of discriminatory intent.

The Court finds no incident in which the plaintiff has applied for a job for which she was qualified and for which the school district was seeking applicants wherein she was rejected despite her qualifications and the position given to another applicant who was not equally or better qualified. *Texas.*

The foregoing constitutes the Court's findings of fact and conclusions of law.

Judgment will be entered for the defendants on all counts, the parties to bear their own costs.

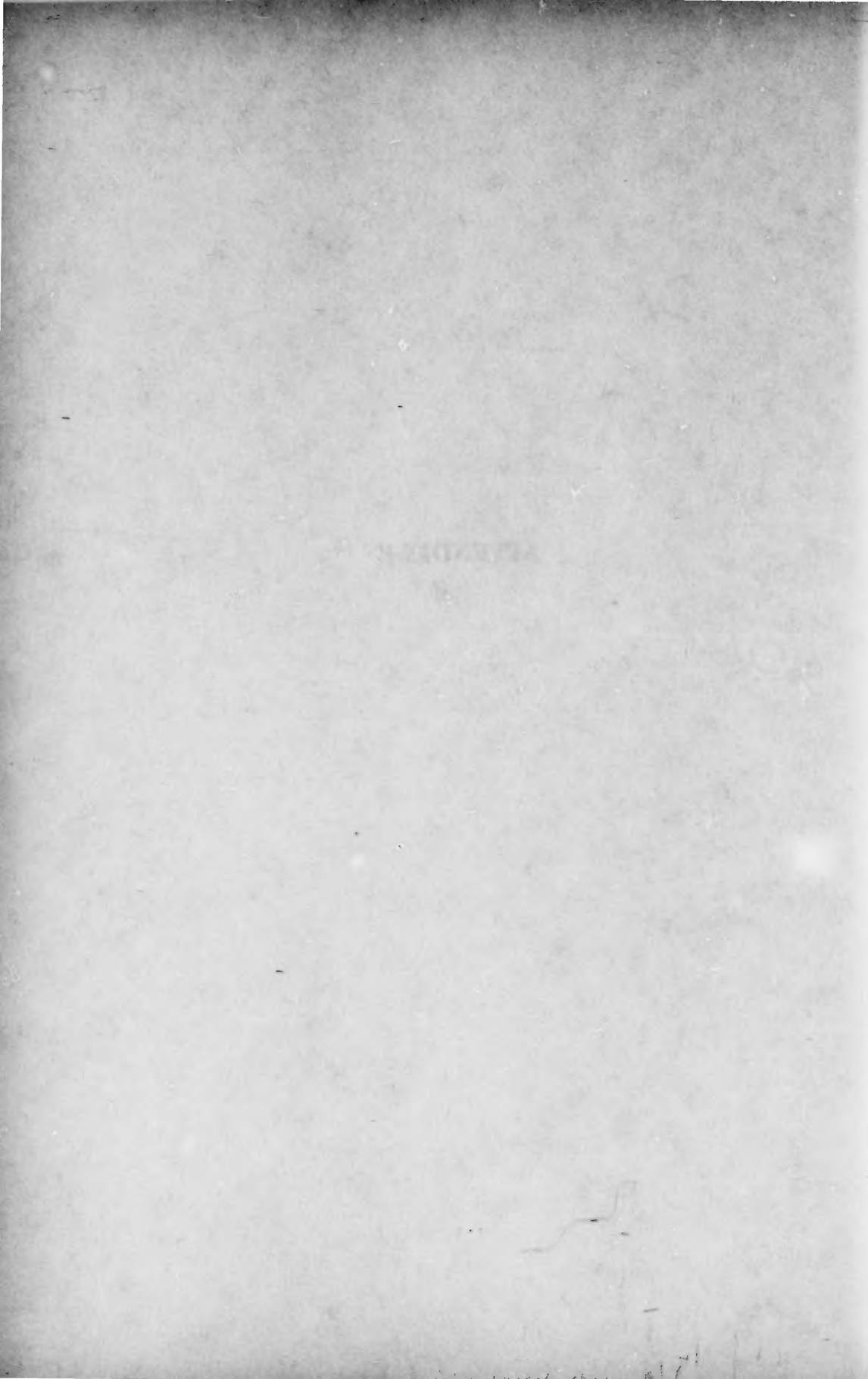
IT IS SO ORDERED.

DATED: This 19th day of September, 1986.

JOHN R. KRONENBERG  
United States  
Magistrate



## **APPENDIX B**



B-1

No. CV 81-5071-K

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

---

SHIRLEY LOFTIS,  
*Plaintiff,*

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,  
*Defendants.*

---

**JUDGMENT**

Entered September 23, 1986  
Clerk, U.S. District Court,  
Central District of California  
By ..... , Deputy.

---

IT IS ADJUDGED that the Court finds in favor of the defendants on all counts and that the action is dismissed.

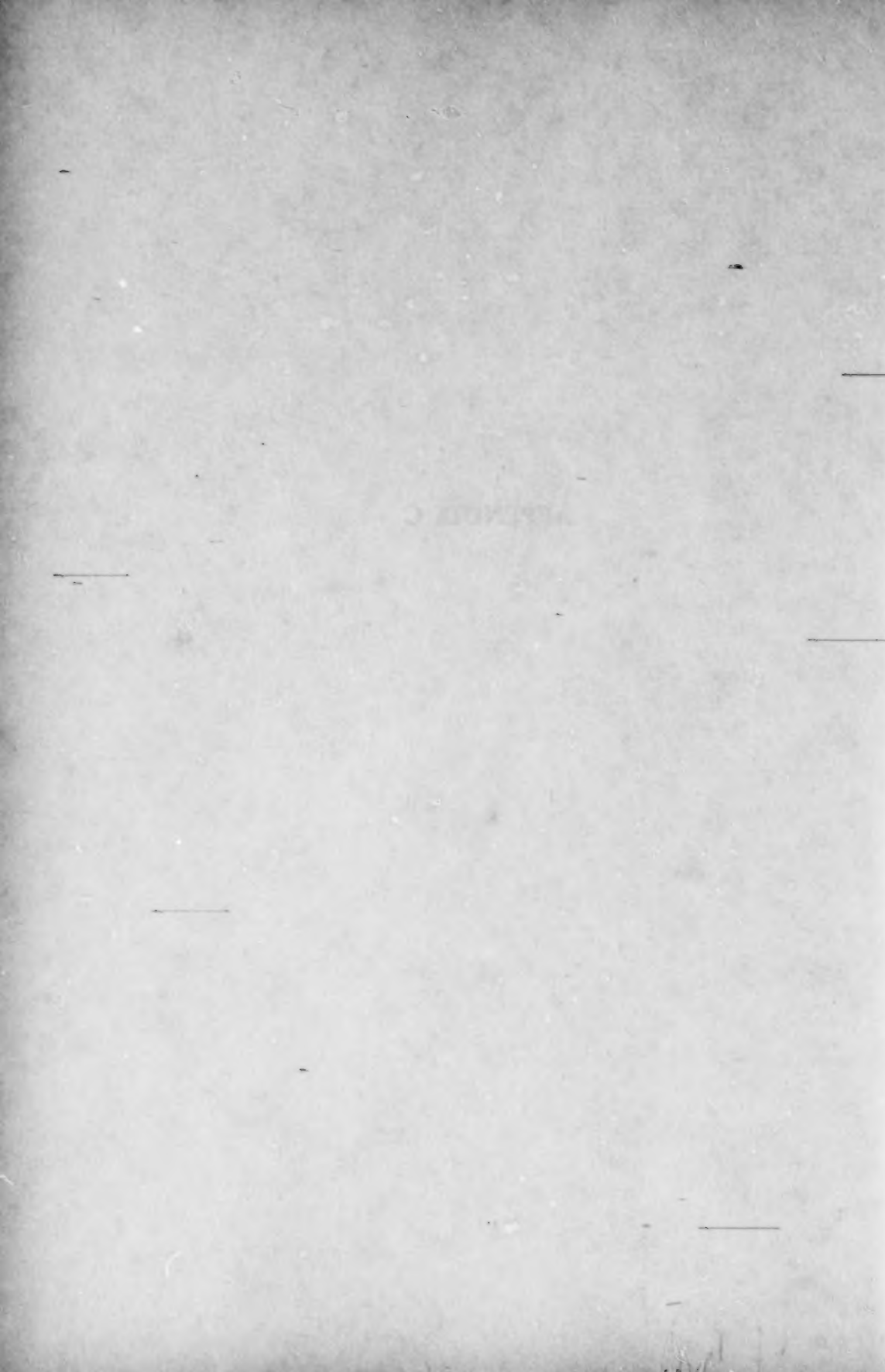
DATED: This 19th day of September, 1986.

JOHN R. KRONENBERG  
United States Magistrate





## APPENDIX C



CA No. 86-6657  
D.C. No. CV 81-5071-K

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

---

SHIRLEY LOFTIS,  
*Plaintiff-Appellant,*

VS.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,  
*Defendants-Appellees.*

---

**MEMORANDUM\***

---

**Appeal from the United States District Court  
for the Central District of California  
John Kronenberg, Magistrate, Presiding**

---

**Submitted April 7, 1989 — Pasadena, California\*\*  
Before: WRIGHT, FARRIS, AND NELSON, Circuit  
Judges**

Filed June 20, 1989

Cathy A. Catterson, Clerk, U.S. Court of Appeals.

---

Loftis appeals the district court's grant of judgment in favor of the defendants in her employment discrimination suit. We affirm.

---

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for submission without oral argument. Fed.R.App.P. 34(a) and 9th Cir. R. 34-4.

## I.

## INTRODUCTION

Loftis sued the Los Angeles Unified School District and seven of its officials, alleging employment discrimination based on her sex, race (white), and age (over 40). Loftis repeatedly and unsuccessfully applied for promotion from her teacher position to an administrative position as assistant principal. Loftis alleges that she was discriminated against because school district officials failed to provide her with assignments helpful for advancement, failed to appoint her to discretionary direct appointments, and withheld notification of promotion cycles. She seeks damages and injunctive relief under 20 U.S.C. § 1681 (Title IX of the Education Amendments of 1972); 29 U.S.C. § 623 (the Age Discrimination in Employment Act), 42 U.S.C. § 2000e (Title VII of the Civil Rights Act); 42 U.S.C. §§ 1981, 1983, 1985(3) (the Reconstruction Era statutes); the Fourteenth Amendment of the U.S. Constitution; Cal. Gov't Code §§ 12940 and 12941 (prohibiting employment discrimination); and California law providing for an implied covenant of good faith and fair dealing in employment contracts and for recovery for intentional and negligent infliction of emotional distress.

The district court granted judgment for the school district following a bench trial. The court previously had granted partial summary judgment for three individual defendants and, following Loftis' case at trial, dismissed all claims against three other individual defendants.

## II.

## STANDARD OF REVIEW

We review de novo the district court's grant of summary judgment. *E.E.O.C. v. Borden, Inc.*, 724 F.2d 1390, 1392 (9th Cir. 1984). We review the district court's findings of fact, including its finding on the ultimate issue of discrimi-

nation, under the clearly erroneous standard. *Roberts v. College of the Desert*, 870 F.2d 1411, 1418 (9th Cir. 1988); *Stones v. Los Angeles Community College District*, 796 F.2d 270, 273. We review de novo legal questions, such as the appropriate legal standard for evaluating evidence. See *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984).

### III.

## DISCUSSION

### A. INTRODUCTION

To prove her employment discrimination claims, Loftis must establish either that she was the victim of disparate treatment — intentional discrimination — or that the district's policies or practices had a disparate impact — discriminatory effect. See *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 335-36, n.15 (1977). The same substantive requirement — proof of disparate treatment or of disparate impact — applies to claims filed under the Age Discrimination in Employment Act as to Title VII. See *Teamsters*, 431 U.S. at 335-36 n.15 (Title VII); *Borden's*, 724 F.2d at 1392 (ADEA); see also *North Haven Board of Education v. Bell*, 456 U.S. 512, 530 (1982) (Title IX) (providing remedy of federal funds cutoff). A successful claim of discrimination under §§ 1981, 1983, or 1985 requires proof of discrimination intent. See *Stones*, 796 F.2d at 272 (§ 1981); B. Schlei and P. Grossman, *Employment Discrimination Law* 693-94 (1983) (§§ 1981, 1983, 1985).

To prove disparate treatment, Loftis must show that the district or its officials had a discriminatory motive in rejecting her promotion requests. See *Borden's*, 724 F.2d 1392. To prove disparate impact, Loftis need not show that the district intentionally discriminated against her. She need only show that facially neutral practices of the district had a



disproportionately adverse impact on her because of her sex, race, or age and cannot be justified on the basis of business necessity. *Teamsters*, 431 U.S. at 336 n.15.; *Borden's*, 724 F.2d at 132-93.

## B. DISPARATE TREATMENT

The district court found that the school district successfully rebutted Loftis' prima facie case of disparate treatment by articulating legitimate, nondiscriminatory reasons for rejecting Loftis' promotion requests. See *McDonald Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). The court found that Loftis failed to prove that the district or its officials intentionally discriminated against her because of her membership in a protected group, the ultimate question in a discrimination case. See *United States Postal Serv. v. Aikens*, 460 U.S. 711, 715 (1983).

The district court's decision was not clearly erroneous. The district court considered the shortcomings of the promotion process and the actions of the individual defendants in determining that no intentional discrimination existed. Considerable evidence of nondiscriminatory reasons for the challenged conduct was presented at trial. The district court found that Loftis was not promoted because of her problems in getting along with her peers and immediate superiors and her failure to request certain assignments, rather than as a result of her race, sex, or age. The district court found that those receiving the promotion were as qualified or better qualified than Loftis. It also found that white females, against whom Loftis claims the district and its officials discriminated, in fact received approximately 50% of the assistant principal and principal, elementary appointments made in Region A after 1978.

Title VII allows an employer to hire an employee "on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide

*occupational qualification* reasonably necessary to the normal operation of that particular business or enterprise.” 42 U.S.C. § 2000e-2(e) (emphasis added); see *Dothard v. Rawlinson*, 433 U.S. 321, 332-34 (1977). The district court referred to the school district’s need to consider factors such as leadership qualities and ability to maintain successful working relationships with peers as a bona fide occupational qualification. Although we have sometimes used the phrase “bona fide occupational qualification” in the same manner as the district court, see, e.g., *Frangrante v. City and County of Honolulu*, No. 87-2921, slip op. 1709, 1714, 1717-21 (9th Cir. March 6, 1989), a requirement of leadership qualities more properly is characterized as a “legitimate, non-discriminatory reason” that an employer may cite to overcome a prima facie case of disparate treatment. See *Texas Dep’t of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981).

The district court also found that the school district and its officials did not act in a retaliatory or harassing manner. The school district presented evidence responsive to Loftis’ allegations of harassment and retaliation. The district court’s conclusion is not clearly erroneous.

### C. DISPARATE IMPACT

The district court found that Loftis established a prima facie case of disparate impact. To rebut such a claim, the school district may refute the statistical evidence and show that no disparate impact exists. See *Connecticut v. Teal*, 457 U.S. 440, 446 (1982). Alternatively, the school district may prove the job relatedness or business necessity of the challenged employment practices. See *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975); *Griggs v. Duke Power Co.*, 401 U.S. 424, 431-32 (1971). The district court determined that the school district successfully rebutted the disparate impact claim in both of these alternative ways.

### 1. No Adverse Impact

Loftis claims that the district court made two legal errors in evaluating the statistical data and expert testimony of the parties. First, she maintains that because she is challenging the entire promotion process, each of its components must be examined to determine disparate impact. The school district's expert testimony addressed only the Training and Experience portion of the process because that was the only portion of the promotion process Loftis did not complete successfully. Second, Loftis argues that the court must address discrimination against her as a white female, as opposed to evaluating only discrimination against whites and females as two distinct groups. The school district's expert separately analyzed statistics by race and sex and did not combine them into the category of white females used by Loftis' statistical expert.

The district court erred in concluding that the school district's statistical expert rebutted Loftis' prima facie case. The statistical evidence and expert testimony cited by the district court only addressed the Training and Examination component of the promotion process. Loftis alleged discrimination in all aspects of the process and her statistical data purports to show discrimination in the entire promotion process. The school district argues that only the Training and Examination component need be addressed, because that is the part of the promotion process that Loftis failed. However, Loftis also unsuccessfully attempted to obtain an assistant principal position through the direct appointment process, a route separate from the Training and Experience evaluation process that fills approximately 25% of the positions. The school district's rebuttal failed to address this aspect of Loftis' allegations.

The district court also erred in failing to examine discrimination against white females as a group, as opposed to whites or females. Loftis may establish a prima facie case of

disparate impact against white females, as opposed to whites or females, if she identifies specific employment practices and shows a casual relationship between the identified practices and the impact. See *Robinson v. Adams*, 847 F.2d 1315, 1318 (9th Cir. 1988) (black males v. blacks); see also *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1416 (10th Cir. 1987); *Jefferies v. Harris City Community Action Ass'n*, 615 F.2d 1025, 1032 (5th Cir. 1980) (black females v. blacks or females). The district court found that such a prima facie case had been established. It then accepted the school district's refutation of that prima facie case based on an analysis of whites and women as separate categories. *Id.* at 37-38.

The school district incorrectly reads *Robinson* to state that discrimination claims against subgroups such as white females are not required. The issue in *Robinson* was whether the evidence presented by Robinson was sufficient to make out a prima facie case of disparate impact against black males, not whether such a subgrouping was valid. See *Robinson*, 847 F.2d at 1318; *id.* at 1321 (Pregerson, J., dissenting).

In sum, the school district's statistical evidence failed to refute Loftis' prima facie case of disparate impact because it left untouched two aspects of that case. The school district's statistical evidence (as described by the district court) did not address the "complete promotion process." Nor did it address the subgroup of white females, as opposed to whites or females, although the district court found that Loftis had made out of prima facie case of discrimination against white females.

## 2. Validity of the Challenged Practices

The district court found that the school district had legitimate reasons for the practices that prevented Loftis from receiving a promotion. The court stated that Loftis'

prima facie case was rebutted by a showing of "bona fide occupational qualification." It stated that the Training and Examination process, but not any other challenged practice, was "valid and job related." It also stated that the school district's "proof of business necessity and of existing social factors" refuted the prima facie case. Citing *Burdine*, the district court also stated that no applicant with lesser qualifications was given a position sought by Loftis.

The district court used an incorrect legal standard in reaching its result. A prima facie case of disparate impact is not rebutted by showing that no lesser qualified applicants were promoted. The practice must be shown to be job related. See *Albermarle*, 422 U.S. at 425. Nor do "existing social factors" provide a basis for overcoming a prima facie case. The district court cites no authority for this proposition, nor do the appellees attempt to defend it.

In its opinion, the district court focused on detailing why the Training and Experience component was a valid, job related practice. It discussed other challenge practices, such as the direct appointment process, in a conclusory way. However, the district court did state that Loftis' failure to receive a direct appointment was due to her lack of rapport with other faculty and school officials, as opposed to any discriminatory motive on the part of school officials. As discussed above, the district court determined that Loftis lacked the necessary leadership qualities and ability to maintain successful working relationships. We interpret these statements of the district court to be a finding of business necessity for the school district's failure to promote Loftis through the direct appointment process. (We read the district court's use of the phrase "bona fide occupational qualification" in its disparate impact analysis as a synonym for the business necessity defense, as we did in the disparate treatment analysis.)

In sum, the district court's determination that the school district rebutted the prima facie case of disparate impact is not clearly erroneous.

### 3. Age Discrimination

Based on the expert testimony of the school district, the court properly determined that Loftis failed to prove adverse impact against those over 40. The district court also properly found that business necessity justified the school district's limiting its consideration of a candidate's experience to that of the last ten years in the Training and Experience component.

## D. STATE COMMON LAW CLAIMS

Loftis alleged that the school district and its officials were liable for negligent or intentional infliction of emotional distress. The district court found no evidence that any of the defendants "ever acted intentionally, outrageously or with reckless disregard so as to cause plaintiff emotional distress." Loftis did not present any evidence rebutting this finding of the district court, which forms a sufficient basis for upholding its determination as not clearly erroneous. The cases Loftis cites in support of her statement that the conclusion of the district court was erroneous concern the standards for bringing, as opposed to proving, a claim. See *Molien v. Kaiser Found. Hosps.*, 27 Cal.3d 916, 167 Cal. Rptr. 831, 616 P. 2d 813 (1980); *Alcorn v. Anbro Eng'g, Inc.*, 2 Cal.3d 493, 86 Cal. Rptr. 88, 468 P. 2d 216 (1970).

The district court stated that it found no evidence that the school district or its officials used anything but good faith in dealings with Loftis. Although Loftis has offered evidence disputing that conclusion, she has not established it to be clearly erroneous. Both the emotional distress and good faith claims are fact-driven and heavily dependent on the credibility of witnesses. The school district did present



evidence refuting Loftis' allegations. That evidence is sufficient to support the district court's determination.

#### **F. DISMISSAL FOR LACK OF AUTHORITY OVER THE PROMOTION PROCESS AND QUALIFIED IMMUNITY**

The district court's dismissal of the claims against certain individual defendants on the grounds that they acted in good faith and thus enjoyed qualified immunity is consistent with its later conclusion that Loftis was not a victim of disparate treatment. We need not reach the issue of qualified immunity because we uphold the district court's conclusion on the disparate treatment issue. Similarly, we need not address the grant of partial summary judgment to certain defendants on the grounds that they lacked authority over the promotion process because we uphold the district court's conclusion on the disparate treatment issue.

#### **G. EVIDENTIARY ISSUES**

In her opening brief, Loftis attacked certain evidentiary rulings of the district court. We review evidentiary rulings for abuse of discretion and will not overturn a ruling unless prejudice is shown. *Roberts*, 870 F.2d at 1418. Contrary to Loftis' assertions in the brief, the district court did not prevent Loftis' expert from presenting any testimony for which a proper foundation existed. Counsel for Loftis ultimately succeeded in presenting the challenged testimony for consideration by the court. No prejudice is shown. Loftis did not assert, much less demonstrate, that prejudice resulted from the exclusion of testimony from Kitzerow.

**AFFIRMED.**

## APPENDIX D



**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

**SHIRLEY LOFTIS,**  
*Plaintiff-Appellant,*

**vs.**

**LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,**  
*Defendants-Appellees.*

---

**CA No. 86-6657**  
**DC No. CV-81-5071-K**  
**(C.D. of California)**

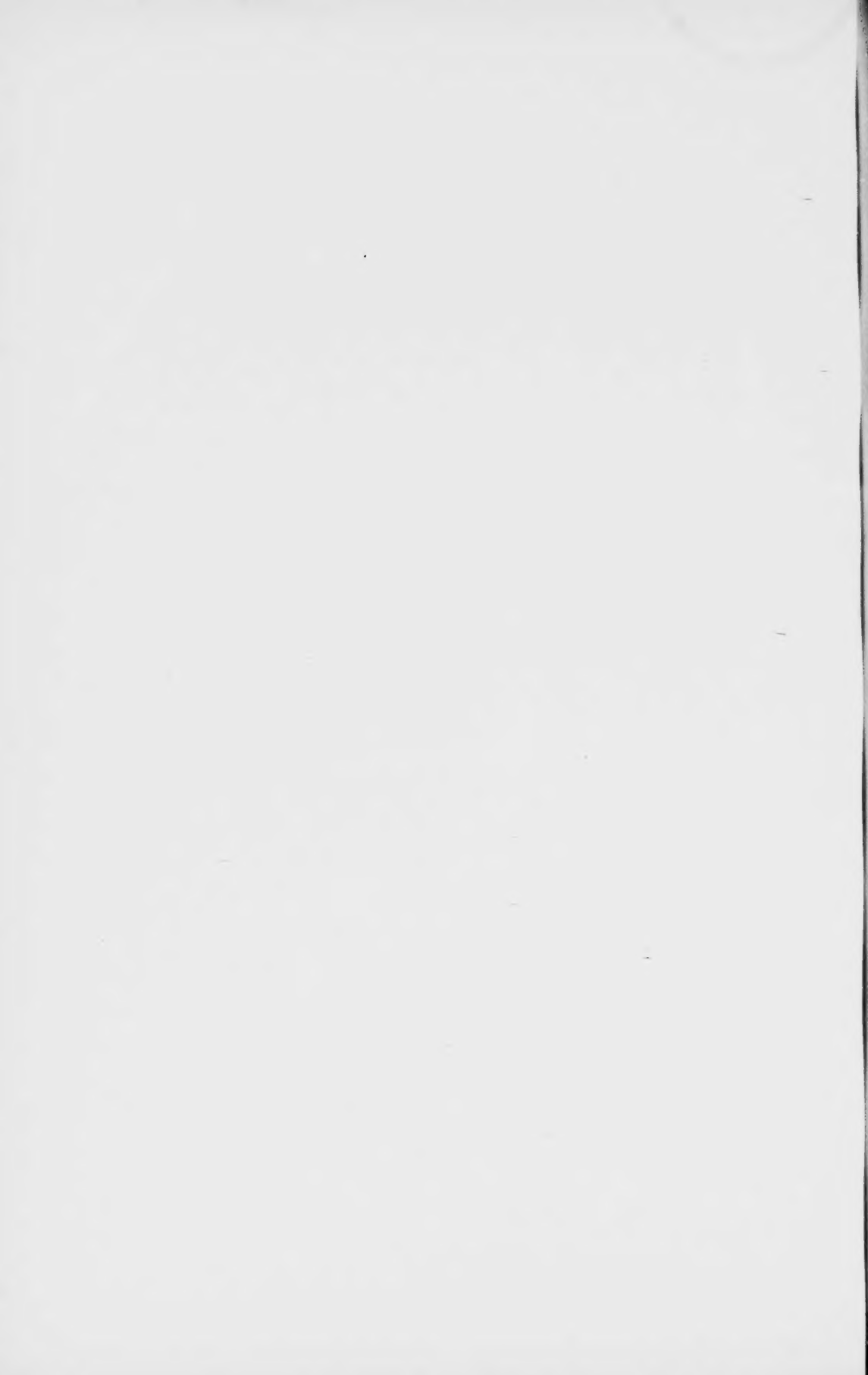
**ORDER**

---

**Before: WRIGHT, FARRIS, and NELSON,**  
**Circuit Judges.**

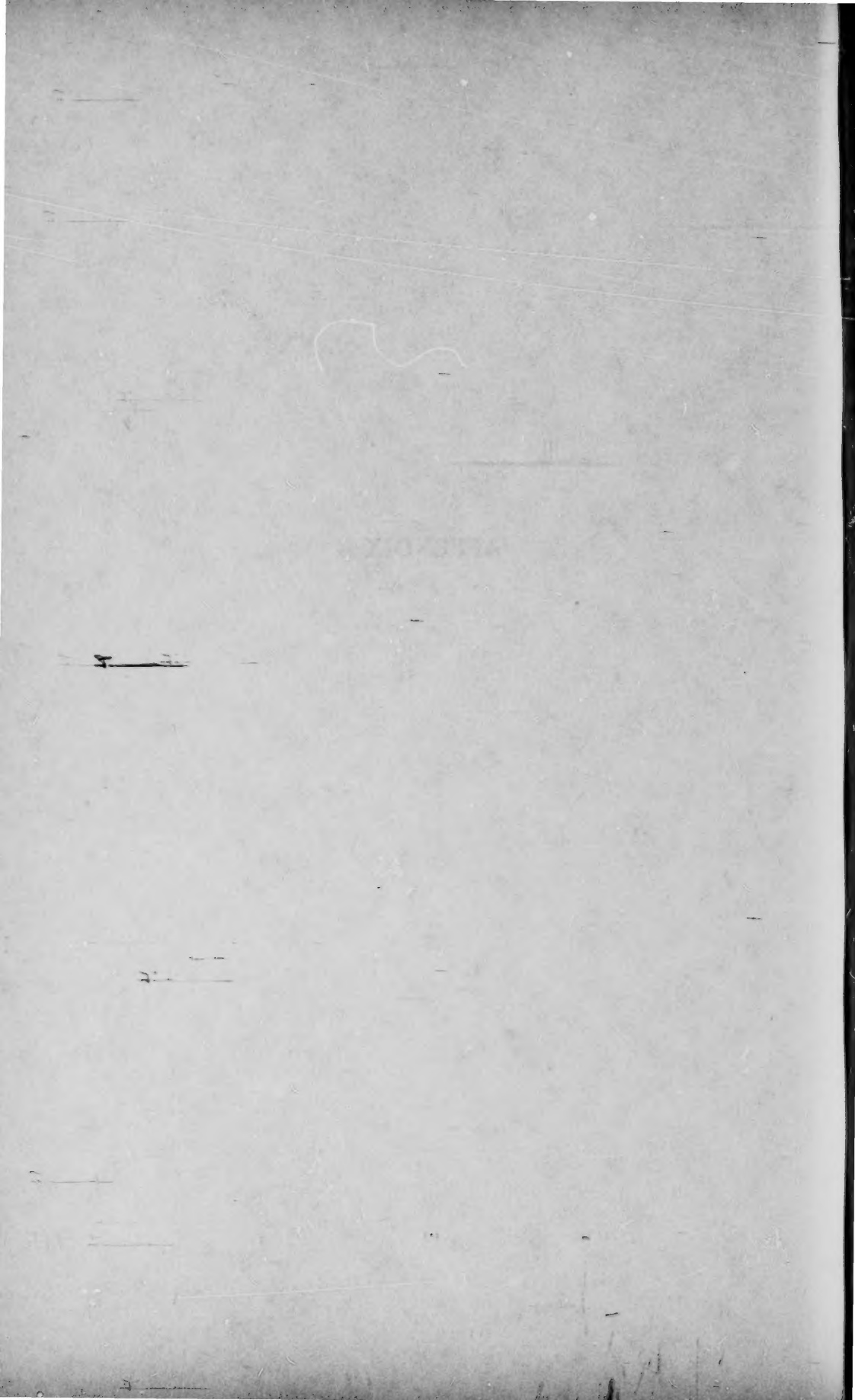
The Petition for Rehearing filed July 5, 1989 is denied.

Filed July 28, 1989  
Cathy A. Catterson, Clerk,  
U.S. Court of Appeals.



## **APPENDIX E**





Petitioner's claims arise under the following constitutional provisions, statutes, and regulations:

**The United States Constitution, Fourteenth Amendment, provides:**

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 provides:**

(a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) In regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) In regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Educa-

tion or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) this section shall not apply to membership practices —

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally

been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) this section shall not apply to —

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for —

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other non-discrimination provisions of Federal law.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

### **Age Discrimination in Employment Act.**

29 U.S.C. 623(a) provides:

It shall be unlawful for an employer —

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any

individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

**29 U.S.C. 631 (a)** provides:

The prohibitions in this chapter (except the provisions of section 623(g) of this title) shall be limited to individuals who are at least 40 years of age.

### **Civil Rights Act of 1866.**

**42 U.S.C. 1981** provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

### **Civil Rights Act of 1871.**

**42 U.S.C. 1983** provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclu-



sively to the District of Columbia shall be considered to be a statute of the District of Columbia.

**Civil Rights Act of 1871.**

**42 U.S.C. 1985(3)** provides:

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

**Civil Rights Act of 1871.**

**42 U.S.C. 1986** provides:



Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

### **Civil Rights Act of 1871.**

**42 U.S.C. 1988** provides:

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and

statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

**Title VII, Civil Rights Act of 1964, as Amended.**  
**42 U.S.C. 2000e-2** provides:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, aggregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

**Title VII, Civil Rights Act of 1964, as Amended.**  
**42 U.S.C. 2000e-3** provides:

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment

agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

### **California Fair Employment and Housing Act.**

**California Government Code section 12900** provides:

This part may be known and referred to as the "California Fair Employment and Housing Act."

**California Government Code section 12940** provides:

It shall be an unlawful employment practice, unless upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California.

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging a physically handicapped employee, or subject an employer to any legal liability resulting from the

refusal to employ or the discharge of a physically handicapped employee, where the employee, because of his or her physical handicap, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger his or her health or safety or the health and safety of others.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger the employee's health or safety or the health or safety of others. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger the employee's health or safety or the health or safety of others.

(3) Nothing in this part relating to discrimination on account of material status shall either (i) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission, or (ii) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an

employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex,

or any intent to make any such limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code.

(f) For any employer, labor organization, employment agency or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(h) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, to harass an employee or applicant. Harassment of an employee



or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment. The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment. For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities. However, "employer" does not include a religious association or corporation not organized for private profit. For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926. Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(i) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(j) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of



employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties which conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance such as a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

California Government Code Section 12941 provides:

(a) It is an unlawful employment practice for an employer to refuse to hire or employ, or to discharge, dismiss, reduce, suspend, or demote, any individual over the age of 40 on the ground of age, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection of termination of employment where the individual applicant or employee failed to meet bona fide requirements for the job or position sought or held, or to require any changes in bona fide retirement or pension programs or existing collective-bargaining agreements during the life of the contract, or until January 1, 1980, whichever occurs first, nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may

make or have made to determine fitness for the job or position sought or held.

Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, and trade schools shall not, in and of themselves, constitute a violation of this section.

(b) This section shall not limit the right of an employer, employment agency, or labor union to select or refer the better qualified person from among all applicants for a job. The burden of proving a violation of this section shall be upon the person or persons claiming that the violation occurred.

### **Equal Opportunity Employment Guidelines**

**29 Code of Federal Regulations sections 1607(F) and (H) provide:**

**F. Caution against selection on basis of knowledges, skills, or ability learned in brief orientation period.** In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

**H. Cutoff scores.** Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected for employment, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

**29 Code of Federal Regulations section 1607.11**  
provides:

**Disparate treatment.**

The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure — even though validated against job performance in accordance with these guidelines — cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

## APPENDIX F

The first part of the book is devoted to a general survey of the history of the world, from the beginning of time to the present day. The author discusses the various stages of human civilization, from the earliest times to the modern era. He also touches upon the different cultures and religions that have shaped the world as we know it today.

In the second part, the author delves into the history of the United States, from its founding to the present. He examines the political, social, and economic developments that have shaped the nation, and discusses the challenges it has faced throughout its history.

The third part of the book is a detailed account of the American Revolution, from the first battles to the final victory. The author provides a comprehensive overview of the events that led to the birth of the United States, and discusses the impact of the Revolution on the world.

The fourth part of the book is a history of the United States from the end of the Revolution to the present. The author discusses the various periods of American history, from the early years of the Republic to the modern era. He also touches upon the different presidents and their contributions to the nation.

The fifth part of the book is a history of the world from the end of the American Revolution to the present. The author discusses the various events and developments that have shaped the world, from the French Revolution to the present day. He also touches upon the different cultures and religions that have shaped the world as we know it today.

The sixth part of the book is a history of the world from the present day to the future. The author discusses the various challenges that the world faces, and offers his own predictions for the future. He also touches upon the different cultures and religions that will shape the world in the years to come.

Exam  
I.D. No.

LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL**  
**SUPERINTENDENT'S REFERENCE**

**DISTRIBUTION:**

1. White copy to PERSONNEL  
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before

to: PERSONNEL DIVISION, DEPT. A

Examination for: ASSISTANT PRINCIPAL, ELEMENTARY SCHOOL

Applicant's Full Name: LOFTIS, SHIRLEY B.

*NOTE: This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.*

Please indicate:

Copy of reference given to candidate

PERSONNEL DIVISION: Please forward  
copy to candidate

Signature: s/ John J. Lingel

Position: Area Supt.

Date: 12/20/81

Exam  
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL  
SUPERINTENDENT'S REFERENCE**

Please indicate your estimate of this applicant's potential for success in terms of the following factors.

	No Opportunity to Observe	Not Endorsed	Certain Qualifications But Insufficient Endorsement	Endorsed	Endorsed With Confidence	Endorsed With Enthusiasm
A. Organization and Management Skills						X
B. Communication Skills					X	
C. Professional Skills						X
D. Human Relations					X	
E. Academic Preparation						X
F. Experience and Growth						X
G. Personal Qualifica- tions; (Includes: Appearance, Voice, Ability to Present Ideas, Creativity, Emotional Balance, Ability to Get Along, Ethical Standards.)					X	
OVERALL PREDICTION FOR SUCCESS:						X

Remarks: (please refrain from identifying the candidate by name, ethnicity or gender.)

This Candidate has served as an elementary school teacher and acting principal at one of the our diversified socio-economic and ethnic schools. This educator provides enriched, relevant, and innovative educational programs that have upgraded the educational experiences of the children served. In addition, this candidate is a very dedicated and committed individual who consistently strives to improve services to the profession.

This candidate should be considered for the position of Elementary School Assistant Principal.

Signature: s/ John J. Lingel

Date: 12/20/81



LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office

Exam  
I.D. No.

(Office Use Only)

**NONCONFIDENTIAL  
SUPERINTENDENT'S REFERENCE**

**DISTRIBUTION:**

1. White copy to PERSONNEL DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before

to: PERSONNEL DIVISION, DEPT. A

Examination for: \_\_\_\_\_

Applicant's Full Name: LOFTIS, SHIRLEY B.

*NOTE: This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.*

Please indicate:

Copy of reference given to candidate

PERSONNEL DIVISION: Please forward  
copy to candidate

Signature: s/ John J. Lingel

Position: Area Supt.

Date: 3/21/79

Exam  
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL  
SUPERINTENDENT'S REFERENCE**

Please indicate your estimate of this applicant's potential for success in terms of the following factors.

	No Opportunity to Observe	Not Endorsed	Certain Qualifications But Insufficient Endorsement	Endorsed	Endorsed With Confidence	Endorsed With Enthusiasm
A. Organization and Management Skills						X
B. Communication Skills						X
C. Professional Skills						X
D. Human Relations						X
E. Academic Preparation						X
F. Experience and Growth						X
G. Personal Qualifica- tions; (Includes: Appearance, Voice, Ability to Present Ideas, Creativity, Emotional Balance, Ability to Get Along, Ethical Standards.)						X
OVERALL PREDICTION FOR SUCCESS:						X

Remarks: (please refrain from identifying the candidate by name, ethnicity or gender.)

This candidate is one of our excellent fourth grade teachers serving a multi-ethnic school community and, in this capacity, has proven to be a very sensitive, empathetic and dedicated educator. This candidate has had varied quasi-administrative experiences which have been excellent preparation for the assistant principal evaluation. This educator has won the support of all members of the school community. This candidate is a very willing and energetic worker who constantly gives extra time and effort to all educational undertakings.

It is recommended that this individual be seriously considered for the position of elementary school assistant principal.

POST

**LOS ANGELES UNIFIED SCHOOL DISTRICT  
Research and Evaluation Branch**

**MEMORANDUM NO. 3  
July 8, 1975**

**APPLICATION DUE: July 25, 1975  
to Promotional Selection Section**

**SUBJECT: ACTING POSITION — ASSISTANT DIRECTOR,  
RESEARCH AND EVALUATION**

The acting position of Assistant Director, Research and Evaluation Branch, Schedule 40, A Basis, is to be filled as soon as possible under the provisions of Board Rule 4213 pending the evaluation of the position by the promotional Selection Section. An unranked list of qualified applicants will be developed from the screening of applications submitted as a result of this announcement.

**Primary Function**

Assists the Director in the management and direction of the Branch.

**Responsibilities**

Serves in the Research and Evaluation Branch; assists the Director with the management and direction of the Branch by performing general duties in relation and addition to one of the following specific assignments: (1) plans and provides leadership to the District-wide evaluation and supplemental testing programs, or (2) plans, appraises, and interprets the educational phases of experimental or special projects and programs; may act as Branch head in the absence of the Director.

**Credential**

Applicants must hold a valid administration credential authorizing K-12 service.

**Qualifications**

*Education*

An earned master's degree from a recognized college or university including satisfactory completion of at least nine semester units of course work in tests and measurements, statistics, and research methods.

*Experience*

1. *Required.* At least eight school years in successful full-time service in a certificated position(s) in the District, at least one of which must have been in a management position(s).
2. *Desirable.* Experience in the field of measurement, research, and evaluation.

**Status**

Permanent certificated employee of the Los Angeles Unified School District.

*For assistance, further information, or an application, please call Mrs. Mary Francisco, Research and Evaluation Branch, at 687-4881 (after July 11, 625-6207). Deadline for application to Promotional Selection Section is July 25, 1975.*

APPROVED: HARRY HANDLER, Associate Superintendent, Instruction.

DISTRIBUTION: All Schools and Offices

PLEASE POST

Exam  
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office**NONCONFIDENTIAL REFERENCE FOR  
EVALUATION OF TRAINING AND EXPERIENCE**

(Office Use Only)

DISTRIBUTION OF NONCONFIDENTIAL  
REFERENCE:

1. White copy to PERSONNEL  
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before  
December 18, 1981LOS ANGELES CITY SCHOOLS  
PERSONNEL DIVISION, DEPT. A  
P.O. BOX 3307  
LOS ANGELES, CALIFORNIA 90051

\_\_\_\_\_ has applied for a position as \_\_\_\_\_

As your criteria for evaluation, consider both the quality of experiences and quantity of experiences as well as the degree of success this candidate has had in each of the areas listed in the following pages. Please indicate your recommendation for each of the factors listed. In completing this reference, you are asked to compare this candidate with all other candidates you have known, and to reduce your personal loyalties to a minimum. We request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact.

**NOTE:** *This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.*

Exam  
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FORM  
FOR ADMINISTRATIVE EXAMINATION****PERSONAL AND PROFESSIONAL QUALIFICATIONS****DISTRIBUTION:**

1. White copy to PERSONNEL  
DIVISION
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before  
\_\_\_\_\_

**LOFTIS, SHIRLEY B.** has applied for a position as  
**ASSISTANT PRINCIPAL, ELEMENTARY**

Please indicate your estimate of this candidate's potential for success in terms of each of the factors listed on this important reference form. As your criteria for evaluation, consider both the amount of experience and the degree of success in each area listed. Inasmuch as this position is one of great importance, we request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact. Your ratings and remarks will have an important bearing on the evaluation of this candidate's fitness for this position. (Please check appropriate boxes below.)

**SECTION I**

	Certain Qualifications, but Insufficient for	Endorsed with	Endorsed with
Not Endorsed	Endorsement	Endorsed Confidence	Enthusiasm

**A. APPEARANCE AND MANNER.**

Appropriate choice of clothing and good grooming. Shows friendliness, courtesy, poise, confidence, fact and enthusiasm.

X

**B. VOICE, SPEECH, AND ABILITY TO PRESENT IDEAS.**

Voice quality pleasing and speech clear and distinct. Conducts meetings and speaks well before an audience. Adequate and appropriate vocabulary. Is logical and to the point. Able to exchange ideas with people of varied backgrounds.

X

**C. MENTAL ALERTNESS.**

Alert and responsive. Grasps essential points quickly. Understands new ideas.

X

**D. CREATIVE ABILITY AND ORIGINALITY.**

Has the ability to create original ideas and is prepared to substantiate.

X

**SECTION I**

Not Endorsed	Certain Qualifications, but Insufficient for Endorsement	Endorsed with Confidence	Endorsed with Enthusiasm
-----------------	---	--------------------------------	--------------------------------

**E. ABILITY TO GET ALONG WITH OTHERS.**

Displays the necessary leadership characteristics for the position. Holds an opinion or point of view with assurance and a spirit of cooperation without giving offense. Gains the cooperation of others. Reacts well under tension.

X

**F. EMOTIONAL BALANCE AND MATURITY OF JUDGMENT.**

Displays good judgment, emotional maturity and a sense of humor. Approaches questions with an open mind. Distinguishes between the important and unimportant. Capable of making a decision and coping with emergencies.

X

**G. PROFESSIONAL ATTITUDE AND ETHICAL STANDARDS.**

Shows professional integrity. Has an acceptable code of professional ethics. Handles confidential material appropriately.

X

**SECTION II****GENERAL PERSONAL AND PROFESSIONAL FITNESS FOR THE POSITION.**

This rating is not necessarily the average of the items listed above. It is an overall summary as to the personal and professional fitness of the candidate's success.

X

**COMMENTS: (Use other side if needed):** This candidate has demonstrated all of the above qualities to a high degree. This person has had major responsibilities in working with our advisory council and has been able to use skills in this area to create a feeling of cooperation between parents and the school.

Period of time the application was under my direction:  
From **September 1976 to Present**

My position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: s/ Sidney C. Hoskins

Date **March 16, 1979**



LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office

Exam  
I.D. No.

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FOR  
EVALUATION OF TRAINING AND EXPERIENCE**

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**A. Professional Skills**

- |  |   |
|--|---|
| 1. Success and experiences as a classroom teacher  | X |
| 2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds            | X |
| 3. Participation in special programs (remedial, ESL, handicapped, etc.)  | X |
| 4. Involvement in innovative teaching practices  | X |
| 5. Skill in analysis and interpretation of testing programs  | X |
| 6. Evidence of proficiency in counseling and guidance  | X |
| 7. Participation in curriculum development   | X |
| 8. Skill in supervision of instruction   | X |
| 9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.) | X |
| 10. Leadership in educational organizations, workshops, etc.   | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**A. Professional Skills**

- |   |   |
|---|---|
| 1. Success and experiences as a classroom teacher   | X |
| 2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds | X |
| 3. Participation in special programs (remedial, ESL, handicapped, etc.)                               | X |
| 4. Involvement in innovative teaching practices   | X |
| 5. Skill in analysis and interpretation of testing programs   | X |
| 6. Evidence of proficiency in counseling and guidance   | X |
| 7. Participation in curriculum development  | X |
| 8. Skill in supervision of instruction  | X |

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.)						X
10. Leadership in educational organizations, workshops, etc.						X

**Remarks:** This candidate had major responsibility as a classroom teacher and for one semester as opportunity room teacher. This person's major strengths are the ability to develop self-discipline in children and to secure the assistance of parents in bringing about positive change in children. This candidate continually is improving service to the school through attendance at in-service and college classes.

	Quantity of Experience		
	Up to One Semester	Two to Five Semesters	Six or More Semesters
<b>B. Organization and Management Skills</b>			
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.			X
2. Skill in delegating responsibility			X
3. Efficiency in management of supplies and equipment			X
4. Ability to budget and administer funds			X
5. Familiarity with modern office procedures			X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)			X
7. Skill in establishing and functioning within appropriate line-staff relationships			X
8. Ability to identify problems, assign and work within valid priorities			X

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
<b>B. Organization and Management Skills</b>						
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.						X
2. Skill in delegating responsibility						X
3. Efficiency in management of supplies and equipment						X
4. Ability to budget and administer funds						X
5. Familiarity with modern office procedures						X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)						X
7. Skill in establishing and functioning within appropriate line-staff relationships						X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

8. Ability to identify problems, assign and work within valid priorities

X

**Remarks:** This person can be called on to assist effectively when participation by students is requested in talent shows, programs, demonstrations, or other events. The creative ideas for presentations are drawn from the students and put together to make a most effective final product. This candidate continually demonstrated this ability in everything that was initiated in the classroom or in working with parents and staff.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

### C. Human Relations

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X

X

X

X

X

X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

### C. Human Relations

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X

X

X

X

X

X

**Remarks:** This person has the ability to recognize small problems and effectively deal with them before they mushroom out of proportion. There is great strength in helping parents to identify student needs and bring about needed change through cooperative efforts. This candidate uses active listening skills when working with others and has a most effective way of drawing out ideas from people.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**D. Communication Skills**

- |   |   |
|---|---|
| 1. Ability to write bulletins, correspondence and reports   | X |
| 2. Skill in communicating with students and parents   | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty   | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**D. Communication Skills**

- |   |   |
|---|---|
| 1. Ability to write bulletins, correspondence and reports   | X |
| 2. Skill in communicating with students and parents   | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty   | X |

**Remarks:** This candidate has well developed techniques for clarity of expression whether working with a child, parent or other staff member. This person is able to communicate ideas both verbally and in written form so that others receive a clear message.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**E. Community Participation**

- |   |   |
|---|---|
| 1. Evidence of working with youth groups                              | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc.                | X |
| 4. Use of community resources in the school program                   | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**E. Community Participation**

- |   |   |
|---|---|
| 1. Evidence of working with youth groups                              | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc.                | X |
| 4. Use of community resources in the school program                   | X |

**Remarks:** This person has made a distinct contribution to the advisory council, senior citizen's group, and P.T.A. through personal involvement in each group. This candidate has been a steady influence in all parent groups through attendance at every meeting and through active participation that produced results.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**F. Academic Preparation**

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X

Quality of Experiences				
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed with Confidence	Endorsed with Enthusiasm

**F. Academic Preparation**

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X

**Remarks:** This candidate is very capable in applying previous experience to current problems. This person brings to the job a varied background which gives a good reserve to draw on for logical solutions to problems.

**OVERALL PREDICTION OF SUCCESS**

X

**SUMMARY OF EVALUATION:** Please summarize your estimate of this candidate's probable success in THIS position based on candidate's training and experience. You are asked to compare this candidate with all other candidates you have known, and to reduce your personal loyalties to a minimum.

**REMARKS:** This candidate has all the skills and abilities to become an outstanding assistant principal. This person is quick to understand the need for solutions to problems, work with others to make a plan, and then follow the plan through to the conclusion.

I feel the greatest attribute of this person is a well developed sense of appropriateness of response in any given situation. This candidate has great introspection and seeks ways to make the contributions more effective in working with students, parents and others.

This person's sincerity and enthusiasm for the job are most evident in the daily performance of duties. This candidate has a fine background of experiences to prepare for any school with any kind of staff.

This candidate gives so much of self in terms of helping students and other teachers that others feel challenged to do their best. This person is quick to

understand the essential points of a problem and see the solution through to the end.

This person will make a distinct and lasting contribution to any school where assignment may be made as an assistant principal.

Approximate time applicant was under your direction:  
From **September 1976** to **Present**

Your position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: s/ Sidney C. Hoskins

Present Position: Principal

Date **March 16, 1979**

Exam  
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FOR  
EVALUATION OF TRAINING AND EXPERIENCE****DISTRIBUTION OF NONCONFIDENTIAL  
REFERENCE:**

1. White copy to PERSONNEL  
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before  
December 18, 1981LOS ANGELES CITY SCHOOLS  
PERSONNEL DIVISION, DEPT. A  
P.O. BOX 3307  
LOS ANGELES, CALIFORNIA 90051**LOFTIS, SHIRLEY B.** has applied for a position as  
**ASSISTANT PRINCIPAL, ELEMENTARY SCHOOL**

As your criteria for evaluation, consider both the quality of experiences and quantity of experiences as well as the degree of success this candidate has had in each of the areas listed in the following pages. Please indicate your recommendation for each of the factors listed. In completing this reference, you are asked to compare this candidate with all other candidates you have known, and to reduce your personal loyalties to a minimum. We request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact.

**NOTE:** *This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.*



LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division

Exam  
I.D. No.

(Office Use Only)

NONCONFIDENTIAL REFERENCE FORM  
FOR ADMINISTRATIVE EXAMINATION

**PERSONAL AND PROFESSIONAL QUALIFICATIONS**

**DISTRIBUTION:**

1. White copy to PERSONNEL  
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before  
December 18, 1981

Please return this form before December 18, 1981

**DISTRIBUTION:**

1. White copy to PERSONNEL DIV.
2. Pink copy for your files
3. Yellow copy to candidate

**LOFTIS, SHIRLEY B.** has applied for a position as  
**ASSISTANT PRINCIPAL, ELEMENTARY SCHOOL**

Please indicate your estimate of this candidate's potential for success in terms of each of the factors listed on this important reference form. As your criteria for evaluation, consider both the amount of experience and the degree of success in each area listed. Inasmuch as this position is one of great importance, we request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact. Your ratings and remarks will have an important bearing on the evaluation of this candidate's fitness for this position. (Please check appropriate boxes below.)

**SECTION I**

	Certain Qualifications, but insufficient for		Endorsed with Confidence	Endorsed with Enthusiasm
Not Endorsed	Endorsement	Endorsed		

**A. APPEARANCE AND MANNER.**

Appropriate choice of clothing and good grooming. Shows friendliness, courtesy, poise, confidence, fact and enthusiasm.

X

**SECTION I**

Not Endorsed	Certain Qualifications, but Insufficient for Endorsement	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
-----------------	---	----------	--------------------------------	--------------------------------

**B. VOICE, SPEECH, AND ABILITY TO PRESENT IDEAS.**

Voice quality pleasing and speech clear and distinct. Conducts meetings and speaks well before an audience. Adequate and appropriate vocabulary. Is logical and to the point. Able to exchange ideas with people of varied backgrounds.

X

**C. MENTAL ALERTNESS.**

Alert and responsive. Grasps essential points quickly. Understands new ideas.

X

**D. CREATIVE ABILITY AND ORIGINALITY.**

Has the ability to create original ideas and is prepared to substantiate.

X

**E. ABILITY TO GET ALONG WITH OTHERS.**

Displays the necessary leadership characteristics for the position. Holds an opinion or point of view with assurance and a spirit of cooperation without giving offense. Gains the cooperation of others. Reacts well under tension.

X

**F. EMOTIONAL BALANCE AND MATURITY OF JUDGMENT.**

Displays good judgment, emotional maturity and a sense of humor. Approaches questions with an open mind. Distinguishes between the important and unimportant. Capable of making a decision and coping with emergencies.

X

**G. PROFESSIONAL ATTITUDE AND ETHICAL STANDARDS.**

Shows professional integrity. Has an acceptable code of professional ethics. Handles confidential material appropriately.

X

**SECTION II****GENERAL PERSONAL AND PROFESSIONAL FITNESS FOR THE POSITION.**

This rating is not necessarily the average of the items listed above. It is an overall summary as to the personal and professional fitness of the candidate's success.

X

**COMMENTS (Use other side if needed):** This candidate has demonstrated all of the above qualities to a high degree. This person has had major responsibilities in working with our advisory council and has been able to use skills in this area to create a feeling of cooperation between parents and the school.

Period of time the application was under my direction:  
From **September 1976 to February 1979**

My position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: /s/ SIDNEY C. HOSKINS

Date **November 30, 1981**

Exam  
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT  
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FOR  
EVALUATION OF TRAINING AND EXPERIENCE**

Quantity of Experiences		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**A. Professional Skills**

1. Success and experiences as a classroom teacher	X
2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds	X
3. Participation in special programs (remedial, ESL, handicapped, etc.)	X
4. Involvement in innovative teaching practices	X
5. Skill in analysis and interpretation of testing programs	X
6. Evidence of proficiency in counseling and guidance	X
7. Participation in curriculum development	X
8. Skill in supervision of instruction	X
9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.)	X
10. Leadership in educational organizations, workshops, etc.	X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**A. Professional Skills**

1. Success and experiences as a classroom teacher	X
2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds	X
3. Participation in special programs (remedial, ESL, handicapped, etc.)	X
4. Involvement in innovative teaching practices	X
5. Skill in analysis and interpretation of testing programs	X
6. Evidence of proficiency in counseling and guidance	X
7. Participation in curriculum development	X
8. Skill in supervision of instruction	X

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.)						X
10. Leadership in educational organizations, workshops, etc.						X

**Remarks:** This candidate had major responsibility as a classroom teacher and for one semester as opportunity room teacher. This person's major strength is the ability to develop self-discipline in children and to secure the assistance of parents in bringing about positive change in children. This candidate continually is improving service to the school through attendance at in-service and college classes.

	Quantity of Experiences		
	Up to One Semester	Two to Five Semesters	Six or More Semesters
<b>B. Organization and Management Skills</b>			
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.			X
2. Skill in delegating responsibility			X
3. Efficiency in management of supplies and equipment			X
4. Ability to budget and administer funds			X
5. Familiarity with modern office procedures			X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)			X
7. Skill in establishing and functioning within appropriate line-staff relationships			X
8. Ability to identify problems, assign and work within valid priorities			X

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
<b>B. Organization and Management Skills</b>						
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.						X
2. Skill in delegating responsibility						X
3. Efficiency in management of supplies and equipment						X
4. Ability to budget and administer funds						X
5. Familiarity with modern office procedures						X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)						X
7. Skill in establishing and functioning within appropriate line-staff relationships						X

8. Ability to identify problems, assign and work within valid priorities

X

**Remarks:** This person can be called on to assist effectively when participation by student is requested in talent shows, programs, demonstrations, or other events. The creative ideas for presentations are drawn from the students and put together to make a most effective final product. This candidate continually demonstrated this ability in everything that was initiated in the classroom or in working with parents and staff.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**C. Human Relations**

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X  
X  
X  
X  
X  
X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**C. Human Relations**

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X  
X  
X  
X  
X  
X

**Remarks:** This person has the ability to recognize small problems and effectively deal with them before they mushroom out of proportion. There is great strength in helping parents to identify student needs and bring about needed change through cooperative efforts. This candidate uses active listening skills when working with others and has a most effective way of drawing out ideas from people.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**D. Communication Skills**

- |   |   |
|---|---|
| 1. Ability to write bulletins, correspondence and reports   | X |
| 2. Skill in communicating with students and parents   | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty   | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**D. Communication Skills**

- |   |   |
|---|---|
| 1. Ability to write bulletins, correspondence and reports   | X |
| 2. Skill in communicating with students and parents   | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty   | X |

**Remarks:** This candidate has well developed techniques for clarity of expression whether working with a child, parent or other staff. This person is able to communicate ideas both verbally and in written form so that others receive a clear message.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**E. Community Participation**

- |   |   |
|---|---|
| 1. Evidence of working with youth groups                              | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc.                | X |
| 4. Use of community resources in the school program                   | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**E. Community Participation**

- |   |   |
|---|---|
| 1. Evidence of working with youth groups                              | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc.                | X |
| 4. Use of community resources in the school program                   | X |



**Remarks:** This person has made a distinct contribution to the advisory council, senior citizens group, and P.T.A. through personal involvement in each group. This candidate has been a steady influence in all parent groups through attendance at every meeting and through active participation that produced results.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

**F. Academic Preparation**

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X
OVERALL PREDICTION OF SUCCESS	X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

**F. Academic Preparation**

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X

**Remarks:** This candidate is very capable in applying previous experience to current problems. This person brings to the job a varied background which gives a good reserve to draw on for logical solutions to problems.

**SUMMARY OF EVALUATION:** Please summarize your estimate of this candidate's probable success in *THIS* position based on candidate's training and experience. You are asked to compare this candidate *with all other candidates you have known*, and to reduce your personal loyalties to a minimum.

**Remarks:** This candidate has all the skills and abilities to become an outstanding assistant principal. This person is quick to understand the need for solutions to problems, work with others to make a plan, and then follow the plan through to the conclusion.

I feel the greatest attribute of this person is a well developed sense of appropriateness of response in any given situation. This candidate has great introspection and seeks ways to make the contributions more effective in working with students, parents and others.

This person's sincerity and enthusiasm for the job are most evident in the daily performance of duties. This candidate has a fine background of experiences to prepare for any school with any kind of staff.

This candidate gives so much of self in terms of helping students and other teachers that others feel challenged to do their best. This person is quick to

understand the essential points of a problem and see the solution through to the end.

This person will make a distinct and lasting contribution to any school where assignment may be made as an assistant principal.

Approximate time applicant was under your direction:  
From **September 1976** to **February 1979**

Your position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: /s/ SIDNEY C. HOSKINS

Present Position: **Principal**

Date **November 30, 1981**

**SPOTLIGHT**  
**Los Angeles Unified School District**

*March 19, 1984*

**24**

**Report recommends changes in certificated  
promotion policies**

Does the district's promotional process for certificated administrators result in the best possible person being selected for a particular assignment?

"Often, but not always" is among the several answers to that question, according to a comprehensive study of "Certificated Promotional Policies and Procedures" — the result of a recent research project conducted by Dr. Owen Knox, assistant superintendent, Personnel Division Reorganization.

The study was ordered by Superintendent of Schools Harry Handler in response to "stated perceptions that current promotional procedures lack validity, do not select the best qualified candidates and do not provide equal access to all candidates."

Dr. Knox presented the report to the Board of Education's Personnel and Schools Committee earlier this month.

The study examined district promotion policies as far back as 1908, as well as numerous reports and studies from the 1960s and 1970s. Many of the recommendations in past records have been implemented in an effort to "increase the appropriateness of the examination process." Many others, according to Dr. Knox, have not.

**Report Includes Interview Results**

The report not only covers historical and present procedures from a factual viewpoint, but contains the results of

interviews with personnel directors of other large school districts in California and around the nation, Los Angeles city and county government and at least half a dozen major private corporations.

Also included are interviews with former and present Personnel Division directors and employees, Board of Education members and representatives of numerous local educational associations and organizations, universities and community organizations concerned with education.

The study asked about:

- objectives of the district's promotional policies and practices;
- the need for review, revisions and changes;
- fairness and equitability of the process for women and minorities;
- whether present policies actually result in the selection of the best candidate;
- quality vs. length of prior service;
- whether a "proper balance" exists between the assessment of the candidate's instructional expertise and managerial skill;
- assessment of a candidate's human relations skills; and
- strengths, weaknesses and improvements in the procedures as a whole.

Dr. Knox noted that while there was widespread agreement among those interviewed that the policies and procedures should be reviewed for possible change, it was harder to find concurrence in how the changes should take place.

While everyone believed the district should try to identify potential administrators as early as possible in their careers, not all agreed that the district has been "aggressively and actively" informing employees of available opportunities.

Thus, the report recommends new certificated employees be given written information about promotional opportunities not only when they are first hired, but — as a reminder — after they complete their probationary periods.

### **T&E Recommendations**

On another issue: If the district requires of an administrative candidate certain levels of T&E (training and experience) to qualify for a promotional exam, then the district "should have the responsibility," Dr. Knox said, to assign candidates to the kinds of schools where the required experience can be obtained.

Potential administrators should be willing to accept "trade-offs" in order to fulfill the T&E requirements, he said.

For example, those whose experiences have been in inner city schools may need to accept the loss of a pay differential in order to gain familiarity with the operation of a suburban area school, while those in suburban assignments should be prepared to travel farther from home and take on the challenge of a more crowded school site or one that has many specially funded programs.

Every candidate, Dr. Knox emphasized, should have an equal chance of receiving assignments which will add up to the required administrative experiences by the time the candidate enters the promotional examination process.

He also suggested that the recommendations in the report be considered as a package, rather than on a piecemeal basis.

Organizations are invited to react to the report by writing Dr. Owen Knox, A-339, Central Administrative Offices.

The Personnel and Schools Committee is scheduled to hear oral reactions to the study on April 12, 1 p.m.

F-30

**REPORT OF A STUDY  
OF  
CERTIFICATED PROMOTIONAL POLICIES AND  
PROCEDURES**

**LOS ANGELES UNIFIED SCHOOL DISTRICT**

**MARCH, 1984**



## **REPORT OF A STUDY OF CERTIFICATED PROMOTIONAL POLICIES AND PROCEDURES**

### **PART I — INTRODUCTION**

This report is the result of a study of the promotional policies and procedures for certificated personnel in the Los Angeles Unified School District. While this study had a focus on the promotional examinations for school-site administrative positions, its analyses, findings, and recommendations, with minor modifications, would apply to any administrative class.

There are five major parts to this report: I. Introduction — purpose of the study; II. Historical Development — a review of policy development and previous studies; III. Present Procedures — a description of the current promotional practices; IV. Data Collection and Analysis — a description of the methods of collecting information and a summary of findings; V. Recommended Promotional Procedures — a description of the recommended development and examination plan; VI. An Implementation Plan — recommendations for immediate and long-range implementation strategies. Budget implications and transition activities are provided.

#### **Purpose of the Study**

This study was designed to determine whether the procedures and policies for the selection of administrators in the Los Angeles Unified School District (LAUSD) should be changed or continued as they are utilized presently. The purposes of the study are:

1. To determine if the policies and procedures are perceived as appropriate in the selection of effective administrators for entry-level and middle-management positions in the District.

2. To determine if the policies and procedures provide equal access to administrative positions in the District for all candidates;

3. To determine what, if any, changes in the policies and procedures would increase the reliability and validity of the selection process while providing equal access to all candidates.

The Superintendent commissioned this study as a result of stated perceptions that current promotional procedures lack validity, do not select the best qualified candidates, and do not provide equal access to all candidates. In addition to collecting information regarding these perceptions, it was decided that there was a need to examine recommendations from previous studies, to review current research findings related to promotional practices and to analyze promotional practices of other institutions.

Proponents of using an assessment procedure as part of the evaluation process were numerous. Strengths enumerated were that assessment centers test job related skills, have validity, equity, and legal defensibility. Also mentioned were the training aspects of the process received by those evaluated. Some centers do not score assessments, but use them to counsel candidates.

**The Examination Process.** Most recommendations and comments about the current examination process related to: the prescribed number of candidates processed, using written exams, unverified T & E's (Brag Sheets), closed vs. open tracers, the subjectivity of promotional committees, the use of ranked lists, and reevaluations.

**Number of Candidates.** Many respondents criticized established examination procedures which require a prescribed number of candidates to be processed and interviewed. One representative said "The number going to

the orals presently includes candidates with no mathematical possibility of succeeding." Although numbers are important in complying with the consent decree, most respondents reported that adequate screening should decrease the number of unsuccessful candidates presently being processed.

**Written Exam.** Those interviewed who commented on written exams stated that written components should be required for all promotional exams. Other entities interviewed such as government, industry, and other school districts use and are advocates of written exams.

Representatives advocated the use of objective and essay exams oriented toward job related questions dealing with concrete, in-depth problem solving strategies. Supported by many were statements that knowledge of relevant facts, codes, and District rules needs to be assessed. It was recommended that an objective exam serve as a preliminary screening process thereby reducing the number of candidates who continue in the evaluation process with no chance of succeeding.

**T & E's (Brag Sheets).** Respondents indicated that writing of T & E's has become an art, professionally done, and an art unknown to applicants outside of the District. Under-scored was that the quality of presented experiences is not verified and there is no supportable evidence of why a particular score was given by the T & E Committee.

Suggestions given to evaluate training and experience were to change the present T & E format from a form to a written discussion of experiences and qualifications, require varied selected observed and evaluated experiences, and utilize simulation techniques.

**Tracers (Responses from References).** Respondents were not in agreement on using open or closed tracers. A

slight majority favored closed tracers indicating open tracers led to dishonesty and that closed tracers could eliminate friendship promotions.

Other comments regarding reference dealt with eliminating unsolicited tracers; reducing the time span of required references from supervisors from 5 years to 3 years; and requiring inservice training of referents in writing supportable references.

**Promotional Committees.** Criticism of promotional committees revolved around subjectivity and reliability. A typical response was, "We need people with knowledge and background to make decisions on candidates." Most often recommended was that the District use, as committee members, a pool of raters, preferably administrators, who have been trained through simulations and practices to evaluate T & E's, references, and oral interviews. The pool would have to be sufficiently large to allow a selection of a different team of raters for each exam which is balanced by sex and ethnicity.

Specific criticisms regarding oral interviews were that they appear to eliminate minorities, may be biased, are invalid, and allow good talkers, who may lack ability, to pass.

**Scores.** Respondents indicated that combining T & E and PQ scores to produce a ranked list did not show the differences in abilities of successful candidates. The ranking and closeness of scores indicate candidates do not differ in quality and there is the assumption that administrators have the same abilities or strengths. Suggested was an analysis of scores to determine clusters of ability and the establishment of a pool rather than a ranked list.

**Reevaluations.** The need to establish a probationary period for administrators during which assessments are made

was strongly emphasized. Performance appraisals have been utilized extensively in government and business and respondents indicated that an evaluation of performance on the job is important.

#### **D. SUMMARY OF FINDINGS**

To determine whether the current procedures and policies for the selection of administrators should be changed or continued, key representatives of districts, organizations, and groups were interviewed. Studies of promotional practices were also reviewed.

There was a consensus among respondents that policies and procedures should be changed to strengthen the validity and reliability of the examining procedure. There was agreement that a development program should be available to all candidates for the acquisition of required skills and that equal access to all experiences leading to promotions should be provided.

**APPENDIX C**  
**SOURCES OF DATA**

**CALIFORNIA SCHOOL DISTRICTS**

**Fresno School District**

Joe Lee, Associate Superintendent

Susanne Pagni, Director of Certificated Personnel  
Services

**Long Beach Unified School District**

Donald Ashely, Former Assistant Superintendent,  
Personnel Services

**Sacramento Unified School District**

Henry T. Morita, Assistant Superintendent,  
Personnel Services

**San Diego County Assessment Center**

Mary Lee Howe

Dianne Yerkes

**San Diego Unified School District**

George Russell, Assistant Superintendent, Personnel

**San Francisco Unified School District**

Stan Schainker

Bob Seymour, Program Manager Certificated  
Personnel

**LARGE SCHOOL DISTRICTS**

**Chicago School District**

Nina Jones, Secretary to the Board of Examiners,  
formerly Assistant Superintendent and Region  
Superintendent

**Dallas Unified School District**

John J. Santillo, Assistant Superintendent, Personnel

New York

Ethel Fitzgerald, Chairman, Board of Examiners  
Jerome Harris, Region Superintendent

Pittsburg School District

Robert Golligan, Executive Director of Personnel and  
Employee Relations

**PRESENT PERSONNEL DIVISION EMPLOYEES**

Mr. Harry Nishisaka, Supervisor, Promotional Selection  
Office

Dr. Richard Singleton, Personnel Research Supervisor,  
Validation and Organizational Research Unit

Mrs. Irene Yamahara, Assistant Superintendent  
Personnel Division, Operations





## PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

On October 20, 1989, I served the within Petition for Certiorari in re: "Shirley Loftis vs. Los Angeles Unified School District, et al." in the Supreme Court of the United States, October Term 1989 No. \_\_\_\_\_, on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

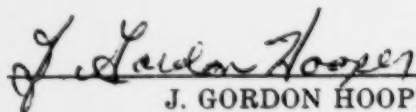
Richard K. Mason, Esq.\*  
Los Angeles Unified School District  
450 North Grand Avenue  
Room A-337  
Los Angeles, California 90012  
*Counsel for Respondents*  
Counsel of Record

All parties required to be served have been served.



I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 20, 1989, at Los Angeles, California.

A handwritten signature in cursive script, reading "J. Gordon Hooper", is written over a horizontal line.

J. GORDON HOOPER